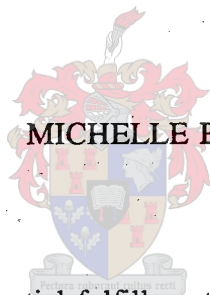


# **AFFIRMATIVE ACTION AT LOCAL GOVERNMENT LEVEL**



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Study project presented in partial fulfillment of the requirements for the degree of  
Master in Public Administration (MPA) at the University of Stellenbosch.

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**DECLARATION:**

I, the undersigned, hereby declare that the work contained in this study project is my own original work and I have not previously in its entirety or in part submitted it at any university for a degree.

Date: 6/10/97.

## **SUMMARY**

This work takes the South African Constitution and compares it to the Constitutions of Australia and Canada. It then reviews the affirmative action laws, with special reference to pertaining to women of those countries. The assumption is made that the Constitution seems to be modelled on the Constitutions of Australia and Canada, especially the discrimination clauses. It follows that the South African model will parallel or closely resemble the affirmative action laws of both countries. Subsequently, if these laws are compatible with those of the Cape Town City Council, what plans are envisaged by this Local Authority to improve the position of women within their employ; taking both the incumbent and prospective employees.

## **OPSOMMING**

Hierdie werk behels 'n ondersoek na die verband tussen die Suid-Afrikaanse Grondwet en dié van Australië en Kanada. Daar word ook op die regstellende aksie wette van dié twee lande ingegaan - veral dié wat op die posisie van die vrou toespits. Daar word aanvaar dat die Tussentydse Grondwet waarskynlik op die grondwette van dié twee lande gebaseer is, veral die dele oor diskriminasie, en derhalwe sal ons regstellende aksie wetgewing dieselfde of soortgelyke vorms aanneem as hulle regstellende aksie wetgewing. Daarna word dié wette vergelyk met die prestasie van die Kaapse Stadsraad in hierdie verband of watter planne deur die plaaslike owerheid beraam word om die posisie van vroue in sy diens te verbeter, met betrekking tot sowel vorige as huidige werknemers.

### **ACKNOWLEDGEMENTS:**

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My mother for her patience and understanding.

My two close friends Heathcliff Thomas and my mentor Keith Donnelly for teaching me the true value of KITA.

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All my lecturers, staff members Sonja and Cynthia and especially the Librarians for all their assistance and guidance.

Kent Goodway for his assistance in proof-reading.

My staff and colleagues for their patience and understanding.

President Lyndon Johnson said on 4 June 1965: *"You do not take a person who, for years, has been hobbled by chains and liberate him [her], bring him up to the starting line in a race and then say, 'You are free to compete with the others' and still justly believe that you have been completely fair. Thus it is not enough just to open the gates of opportunity."*

## TABLE OF CONTENTS

	PAGE
Declaration .....	(i)
Summary .....	(ii)
Opsomming .....	(iii)
Acknowledgements .....	(iv)
<b>CHAPTER 1: INTRODUCTION AND OVERVIEW</b> .....	1
1.1 INTRODUCTION .....	1
1.2 DEFINITIONS .....	1
*1.2.1 Affirmative Action .....	1
1.2.2 Education and Training .....	3
1.2.3 Culture .....	3
1.2.4 Cape Town City Council .....	4
1.2.5 SAAME .....	5
1.3 RESEARCH OBJECTIVE .....	5
1.4 RESEARCH GOALS .....	5
1.5 RESEARCH METHODOLOGY .....	6
1.6 LIMITATIONS OF THE RESEARCH .....	6
<b>CHAPTER 2: THEORETICAL PERSPECTIVES</b> .....	7
2.1 INTRODUCTION .....	7
*2.2 WHERE DOES/SHOULD AN AA PROGRAMME START? .....	7 <sup>+</sup>
2.3 THE VALUE OF EDUCATION AND TRAINING .....	9
*2.4 WHO DOES/SHOULD AFFIRMATIVE ACTION AFFECT? .....	10 <sup>+</sup>
*2.5 WHY AFFIRMATIVE ACTION FOR WOMEN? .....	11 <sup>+</sup>
*2.6 FACTORS INFLUENCING THE IMPLEMENTATION OF AA .....	13 <sup>+</sup>
*2.6.1 Culture .....	13
*2.6.2 Stereotyping .....	15
2.6.3 Discrimination in Job Advertising .....	17
*2.6.4 Experience and Merit vs Staff Development .....	19
*2.6.5 Legislative & Constitutional Status of Women .....	20
*2.6.6 Problems with the Advancement of Women .....	20
2.6.7 Summary .....	21
<b>CHAPTER 3: THE CONSTITUTIONAL AND LEGISLATIVE PROVISIONS FOR AFFIRMATIVE ACTION</b> .....	22
3.1 INTRODUCTION .....	22
3.2 CONSTITUTIONAL PROVISIONS .....	22
3.2.1 Australia .....	22
3.2.1.1 The Discrimination Clauses in the Australian Bill of Human Rights .....	22
3.2.2 Canada .....	23
3.2.2.1 The Canadian Constitutional Amendment Bill, June 20 of 1978 .....	23
3.2.2.2 Ontario Human Rights Code .....	23
*3.2.3 South Africa .....	24
3.2.3.1 The South African Constitution's Discrimination Clauses .....	24 <sup>+</sup>
3.2.4 Comparative Overview .....	25

3.3	LEGAL ASPECTS OF AFFIRMATIVE ACTION	26
3.3.1	Australia	26
3.3.1.1	The Australian Affirmative Action (Equal Employment Opportunity for Women) Act 1986	27
3.3.1.1.1	Issuing A Policy Statement	28
3.3.1.1.2	Appointing the Appropriate Staff	29
3.3.1.1.3	Consulting with Trade Unions	30
3.3.1.1.4	Consulting with Employees	30
3.3.1.1.5	Analysing the Employment Profile	32
3.3.1.1.6	Analysing Employment Policies and Practices	32
3.3.1.1.7	Setting Objectives and Forward Estimates	33
3.3.1.1.8	Monitoring and Evaluating	34
3.3.1.1.8.1	Methods of Monitoring and Evaluating	34
3.3.1.1.8.2	Application of the Merit Principle	35
3.3.1.1.9	The Director of Affirmative Action	35
3.3.1.2	The Public Service Act (Amended in 1984 by the Public Service Reform Act)	35
3.3.1.3	The Commonwealth's Sex Discrimination Act 1984 and Affirmative Action Act 1986	36
3.3.1.3.1	Sexual Discrimination	37
3.3.1.3.2	Discrimination on the Grounds of Marital Status	38
3.3.1.3.3	Discrimination on the Grounds of Pregnancy	38
3.3.1.3.4	Sexual Harassment	39
3.3.1.4	The Equal Employment Opportunity (Commonwealth Authorities) Act 1987	40
3.3.2	Canada	41
3.3.3	South Africa	42
	<b>CHAPTER 4: AFFIRMATIVE ACTION IN SOUTH AFRICA</b>	44
4.1	INTRODUCTION	44
4.2	CENTRAL GOVERNMENT'S ROLE IN THE CHANGES	47
4.3	LOCAL GOVERNMENT IN GENERAL	49
4.4	THE CAPE TOWN CITY COUNCIL	53
	<b>CHAPTER 5: RESEARCH FINDINGS AND RECOMMENDATIONS</b>	59
5.1	INTRODUCTION	59
5.2	RESEARCH FINDINGS	59
5.2.1	The AA Agreement	59
5.2.2	Implementation of this Agreement	60
5.2.3	Other Programmes/training	62
5.2.4	Staffing Levels	63
5.2.5	The Australian Affirmative Action (Equal Employment Opportunity for Women) Act 1986 and the Cape Town City Council	66
5.2.5.1	Policy Statement	66
5.2.5.2	Appointment of Appropriate Staff	67
5.2.5.3	Consultation with Unions	68
5.2.5.4	Consultation with Staff	68
5.2.5.5	Analysis of Employment Profile	69
5.2.5.6	Analysis of Employment Policies and Practices	70
5.2.5.7	Setting of Objectives and Forward Estimates	70
5.2.5.7.1	Monitoring and Evaluation	71
5.2.5.7.2	Merit Principle	72
5.3	OTHER ISSUES AND CONCERNS	73
5.3.1	The Implementation of AA	73
5.3.2	Communication	74
5.3.3	Representivity of Role Players on the AA Board	74
5.3.4	Training	75



5.3.5 Negative Perceptions .....	75
5.4 RECOMMENDATIONS .....	76
5.5 CONCLUSION .....	77

BIBLIOGRAPHY .....	79
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ANNEXURE A: Policy Objectives of Equal Employment Opportunity and Affirmative Action	
ANNEXURE B: Courses for 1996/97 Offered by the Department of Human Resources, Cape Town City Council	

## LIST OF FIGURES

Figure 1.1: Levels of Government .....	4
Figure 4.1: AA Board .....	56

## LIST OF TABLES

Table 1: Cape Town City Council Permanent Staff Profile as at 1994-06-30 .....	64
Table 2: Cape Town City Council Permanent Staff Profile as at 1993-12-31 .....	64
Table 3: Changes in the Cape Town City Council Permanent Staff profile between 1993-12-31 and 1994-06-30 .....	65
Table 4: Cape Town City Council Permanent Staff Profile as at 1996-06-30 .....	65
Table 5: Changes in the Cape Town City Council Permanent Staff profile between 1994-06-30 and 1996-06-30 .....	65

# 116

## **CHAPTER 1: INTRODUCTION AND OVERVIEW**

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### **1.1 INTRODUCTION**

Affirmative action (AA) is the buzz word of the nineties in South Africa. It is used in virtually every circle and heard in every board room. But what does it mean, who does it affect and how is/should it be implemented? AA covers a wide field and, in order to do justice to the subject, it is essential to narrow this down. South Africa is a growing, ever-changing country and it is the duty of each and every one of her citizens to do the best he or she can to ensure that this growth and change is in the right direction so that each and every one of her citizens can benefit from the best country in the world.

It has been said that one can teach a man and one teaches one person, but teach a woman and one teaches a nation. It was therefore thought that this would be the best direction to take and to combine these two ideas - affirmative action and the role of the woman.

This work assesses affirmative action with special reference to women in the Cape Town City Council. One of the main problems will be to ascertain if and how the Cape Town City Council applies this form of affirmative action. The Cape Town City Council's AA Agreement and its implementation is discussed and the various shortcomings are identified and recommendations made to improve the situation.

### **1.2 DEFINITIONS**

The main concepts used have been clarified and are defined below:

#### **1.2.1 AFFIRMATIVE ACTION**

Gavin Pieterse (1996: 22), the former Affirmative Action Project Director of the Cape Town City Council, stated that it is *"critical to understand that affirmative*

*action is merely one of a multitude of interventions which has as its ultimate objective, organisational transformation."*

Many different, but in many ways similar, definitions have been mooted for affirmative action, to name but a few:

Rudy de Beer (1994: 28) defines it as follows: *"Employment equity broadly defines a situation in which no employee is discriminated against on any grounds except where legal requirements may specify circumstances dictate otherwise. Affirmative action is means as to achieve this."*

A further important point on the time period involved, is brought to light in the definition given by Human (1993: 3): *"... a temporary intervention designed to achieve equal employment opportunity without lowering standards and without unduly trammelling the career aspirations or expectations of current organisational members who are competent in their jobs."* [own emphasis]

Redcliffe (1995: 19) quotes Harvard law professor, Randall Kennedy's definition as *"policies that provide preferences based explicitly on membership of a designated group."*

The Cape Town City Council defines affirmative action as : *"a strategy and process to be used for a limited period of time to attain the policy objectives of Equal Employment Opportunity and Affirmative Action as contained in clause 4. <sup>1)</sup> It will specifically include actions and strategies to overcome the results of past discriminatory employment practices. ... [and] ... Equal Employment Opportunity (EEO) shall mean equity in employment through actively prohibiting discrimination based on race, gender or disability. Further: (1) to be treated in employment on the basis of personal merit and ability; (2) to be advanced to a higher job without prejudice and/or discrimination; (3) to be protected against discrimination, exclusion or loss of opportunity in terms of conditions of employment on grounds of race, gender or disability [and/or] (4) to be protected against discrimination, exclusion or*

*loss of opportunity in terms of pregnancy, maternity and child caring responsibilities.*" (Cape Town City Council, 1994: 1-2)

<sup>1)</sup> Clause 4 is set out in the attached Annexure 'A'.

To summarise therefore: affirmative action is a temporary intervention process designed to achieve equality in employment opportunities, equity within the workplace and total lack of discrimination on any grounds. This encompasses education and training to enable all roleplayers to be in a position to qualify for or to be judged not only on qualifications but on merit and ability, for promotion into higher positions without prejudice or discrimination, not to be excluded or lose out in any opportunity on the grounds of race, gender, <sup>et</sup> sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability or any other grounds covered under Section 8 of the **Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).**

#### 1.2.2 EDUCATION AND TRAINING

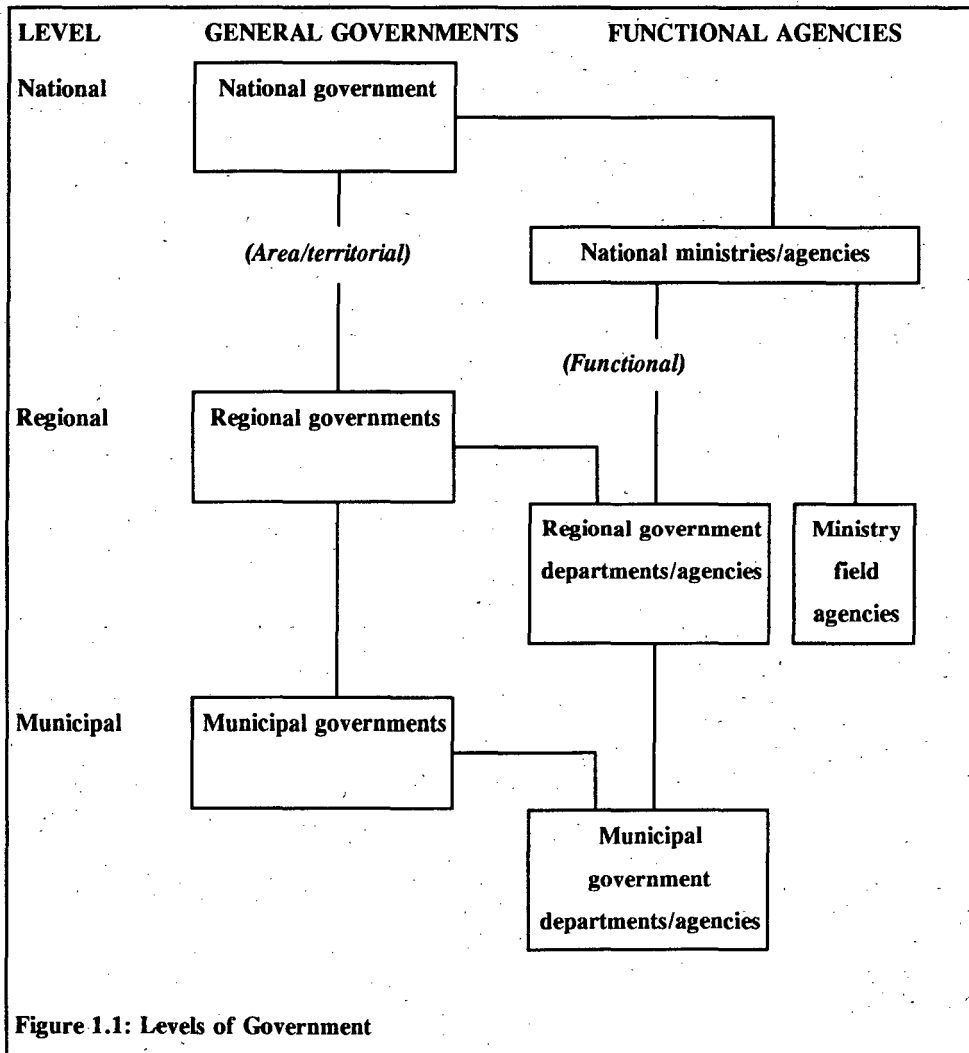
The term education and training is used in its broadest sense; by it is meant not only the formalised primary and secondary school education but includes the education and training of people for and within jobs within both the public and private sectors.

#### 1.2.3 CULTURE

The commonly used definition is *"the customs, civilization, and achievements of a particular time or people"*. (Tulloch, 1993: 348) Motshabi (1991: 118) quotes Tylor's definition as *"a complex whole which includes knowledge, belief, morals, law, custom and any other capabilities and habits acquired by man [and woman] as a member of society"*. This encompasses company culture, i.e. the underlying customs, rules, methods, 'cultivation', etc. of ideas and ideals within the organisation.

### 1.2.4 CAPE TOWN CITY COUNCIL

This work looks at AA in the Cape Town City Council, a Local Government body. Below is a schematic representation showing where such a Local Government body fits into the State Hierarchy:



(Humes, 1991:4)

For the purposes of this thesis, use is made of the name Cape Town City Council for the Local Authority governing the Cape Town area and not the Transitional Metropolitan Council or any new name by which this Local Authority becomes known.

### 1.2.5 SAAME

Both the names SAAME and IMATU will be used for the South African Union of Municipal Employees despite the fact that the name was changed to IMATU (Independent Municipal and Allied Trade Union) during the period in which this work was written.

## 1.3 RESEARCH OBJECTIVE

The objective of this research would be to briefly look at the South African Constitution and compare it with those of Canada and Australia on whose Bills of Rights the SA Constitution seems to be modelled. The assumption is made that SA affirmative action legislation will take a similar form as that of Australia and Canada and then the aim is to take the requirements of the AA legislation of these two countries and to see if and how the Cape Town City Council utilises the requirements of these AA Acts.

This aim encompasses an investigation into the current situation in South Africa and, by making certain assumptions on the future, to look at affirmative action within Local Government and to ascertain what is being and can be done to promote the position of women within this sector with special reference to the Cape Town City Council.

## 1.4 RESEARCH GOALS

The work will be divided into chapters handling the following topics:

- Chapter 1: Introduction and overview
- Chapter 2: Theoretical perspectives.
- Chapter 3: Constitutional and legislative provisions for affirmative action in Australia, Canada and South Africa.
- Chapter 4: Affirmative action in South Africa.
- Chapter 5: Assessing AA/Research findings.

## 1.5 RESEARCH METHODOLOGY

This study uses a problematical-critical approach, that is, the existing situation is to be identified and the effects of the implementation of an AA programme is to be ascertained. This will entail interviewing unions, employees and management as well as experts in these fields of AA in various organisations within the public sector. The main methodology will be a literature study used together with interviews and correspondence with staff and unions to ascertain whether the proposed system(s) will be the ideal system for such a multifarious organisation. The interviews will include the use of carefully constructed questionnaires to ascertain the knowledge of and feeling towards AA as a whole and to establish the wishes, needs and requirements of all those involved in the Council (unions, employees and management).

## 1.6 LIMITATIONS OF THE RESEARCH

While obtaining information on the Constitutions of Canada and South Africa were fairly easy, the same could not be said of the Australian Bill of Rights. Despite visiting the Australian Embassy and many libraries, this proved to be a difficult task. Various authors have written on the subject but do not give good solid proof of the fact that the SA Constitution is closely tied to that of Australia - especially in the discrimination clauses.

In contrast, information on the Australian Affirmative Action Laws was much easier to obtain than those of Canada.

This chapter outlined the work and the meaning of the terminology used in the work. In the next chapter, the discussion covers affirmative action in general, its meaning, its coverage and its uses and problems.

2.1

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## **CHAPTER 2: THEORETICAL PERSPECTIVES**

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### **2.1 INTRODUCTION**

This chapter discusses affirmative action in general, discussing its ideal starting point, the peoples that it effects, while looking in more depth at why an AA programme for women should be put into place, the problems encountered with AA programmes and lastly, briefly looks at the legal aspects of an AA programme.

### **2.2 WHERE DOES/SHOULD AN AA PROGRAMME START?**

Eric Mafuna, an independent management consultant and an expert in black management development, is of the opinion that affirmative action should start at the corporate level with the development of the company's management team (usually white managers) and follow through to a fundamental and complete change in company culture. The key to the successful implementation of an affirmative action programme is the creation of opportunities for people to work. South Africa needs a solid, firm commitment from employer groups to job creation and development. The company culture has to be changed and developed and the board level executives are best equipped to inculcate a corporate climate of tolerance, sympathy and warmth to facilitate personal growth and development. *"Affirmative action will work if the corporate culture, the structure and distribution of opportunities are in harmony with the goals and ideals of affirmative action principles."* (1993: 18-19)

Gavin Pieterse (1995: Interview) believes that the most important factor with which to start, is to change the way people think in the organisation from top to bottom. The thinking of the people and their world views includes the way they perceive one another, the way they perceive their jobs and the way they perceive the organisation.

A common and shared vision has to be created throughout the organisation in order to get everybody to align themselves, in terms of what they do, in terms of the



structures, in terms of how they do things, all in accordance with that shared vision. Such a shared vision would ideally be of a non-racial, non-sexist, highly effective, streamlined organisation that can deliver in terms of the needs of the people in the service area.

Albertyn and White (1994: 59) points out that a well-conceived affirmative action policy requires consultation with the workforce, a full audit of staff skills and capacities, a serious examination of all current processes for promotion and an audit of which staff are trained and the reason these staff underwent training. Any employer who institutes the above audits and enquiries, will discover that, not only that they have considerable room for improvement, but also that the institution of better practices will improve the workforce and make them more contented and more productive. Further to this, a sound affirmative action policy should pay attention to all levels of an organisation and should ensure that all positions where one sex/race category predominates are examined and steps taken to normalise the profile of those positions. (Albertyn and White, 1994: 62)

David Putter (1996: Interview) Metro Manager of the Wits Metro Rail Services, sees affirmative action as part of the larger process of affirmative change. Affirmative change is a holistic approach with its foundations being agreed-upon values. The four pillars of affirmative change are affirmative learning, affirmative empowerment, affirmative leadership and affirmative action with affirmative action being by far the most sensitive of all. In a parastatal organisation it could very well be argued that the human resource profile at every level of the organisation should reflect the demographics of the particular community. Affirmative action must also be seen as a temporary action which must be terminated once desired levels have been achieved whereafter appointments should continue based on skills. It is a process that takes place over a set period of time. At the core of affirmative action should be the desire to ensure a non-discriminatory future and to redress any injustices of the past. Affirmative action should, by its very nature, phase itself out over a period of time by decreasing checks and balances.

### 2.3 THE VALUE OF EDUCATION AND TRAINING

The **White Paper on Education and Training** states that *"The State's resources must be deployed according to equity, so that they are used to provide essentially the same quality of learning opportunities for all citizens. ... Fair opportunities for training and advancement in the education service, including an affirmative action policy, are essential, in order to ensure an effective leadership cadre which is broadly representative of the population they serve. The representation of women in leadership positions must be drastically increased."* (RSA, 1995: 21)

Karl Hofmeyr (1991: 305) states that *"Management education has to play its part in assisting black, so-called 'coloured', Asian, and female employees to succeed in management. More effort has to be made to enrol people in these categories into management programmes and to improve pass rates."*

Western Cape Black Management Forum Chairman Mpathi Nyewe said that AA, coupled with international competitiveness and economic growth, would achieve long-term success only if SA adopted a national Human Resources (HR) strategy that focused on training and development. (Douglas, 1995: 3)

Themba Sono, Executive Director of the Centre for Development Analysis intimates that the foundations must be laid for a sound educational system and then the people must be left to make their own decisions: *"After making educational, training, and employment opportunities available to everyone, I'd leave them alone to live their own lives. Big brother is no good."* (Financial Mail Special Report, 1994: 61)

Chris Ronalds (1991: 2) points out that there is no evidence of a distinct difference in skills and competence by sex, but there are marked divergences between boys and girls by the time they leave the education system in terms of subjects studied, level of qualification sought and career aspirations. The potential of many young women is not realised in the current educational system, resulting not only in personal frustration but in a waste of skill and talent for the nation as a whole.



1.6

Sipho Mahamba, a director of Murray & Roberts, makes the point that people must be able to follow their own talents: *"I'd deploy lots of resources into education, and I'd diversify the school curriculum. Some people will excel in vocational subjects, others in purely academic subjects. We need education that brings out the best in people."* (Financial Mail Special Report, 1994: 61)

Snape, Redman and Bamber (1994: 161-162) agree with Ronalds and argue that one of the main reasons that there is a predominance of men in managerial and professional occupations is to some extent a reflection of the fact that they have tended to be more highly qualified than women and, although this difference is greater for older age groups, and this difference is becoming less marked. However, while such trends of achieving higher education bode well for the future success of women to higher-level job opportunities, there is still evidence of sex-stereotyping in educational choices. Girls more often chose subjects like English, History, Biology and French, whilst boys are more likely to do Mathematics, Physics, Geography and Chemistry. These differences are reflected in higher and further education, with women being more likely to choose business and social studies, education, nursing, languages and creative arts subjects, whilst men become engineers, study technology and the physical and mathematical sciences.

The 1996 Breakwater Monitor Study (Kobokoane, 1996: 1) points out the training is also important within organisations: *"Changing the overall skills capacity of the SA workforce remains a major challenge and will require companies to develop a more coherent and a positive approach to education and training"* - especially how women's role can be redefined. Such a change should place special emphasis on practical skills so as to equip women for new roles.

## 2.4 WHO DOES/SHOULD AFFIRMATIVE ACTION AFFECT?

Eric Mafuna (1993: 18) states that it "is not confined to blacks but involves women and disabled people, all of whom have been disadvantaged in the past."

PPWAWU's Education Secretary, Welcome Ntshangase, states: *"Affirmative action is NOT about promotion of a few individuals out of the shop floor, but a workplace democracy involving all of the workers."* (Alperson, 1993: 24)

Albertyn (1994: 57) warns that *"affirmative action programmes and policies should ... address both race and gender, ... International experience warns us that the separation of race and gender marginalises black women in favour of black men and white women."*

## 2.5 WHY AFFIRMATIVE ACTION FOR WOMEN?

State President Nelson Mandela (1994: 206) wrote in his autobiography about the importance of having women on the 'team' when he wrote that *"few issues touched a nerve as much as that of passes for women. The state had not weakened in its resolve to impose passes on women, and women had not weakened in their resolve to resist. Although the government now called passes 'reference books', women weren't fooled: they could still be fined R10 or imprisoned for a month for failing to produce their 'reference book'. ... Women were courageous, persistent, enthusiastic, indefatigable, and their protest against passes set a standard for anti-government protest that was never equalled. As Chief Luthuli said, 'When women begin to take an active part in the struggle, no power on earth can stop us from achieving freedom in our lifetime.'"*

The lack of opportunities is particularly evident in managerial occupations, with talk of a 'glass ceiling' through which women find it difficult to rise. This causes concern for at least three reasons. Firstly, for reasons of equity. Where particular women have qualifications, experience and skills equal to or superior to their male colleagues, to deny them access to more senior jobs seems unfair. The demand for equal opportunities has grown as more women enter further and higher education. Further the image as an equal opportunity employer may be useful to the organization in public relations terms. Finally women represent an underutilized resource for employers. Demographic trends show a marked decline in the number

of young people entering the labour market, and many employers are looking for alternative sources of labour. This could give opportunities to women, ethnic minorities, older workers and people with disabilities who have found it particularly difficult to progress into managerial and professional occupations in the past.

Many unions also place women's issues high on their affirmative action agendas as they feel that "in seeking to help women, ... they are also helping men." The Unions call on employers to open all company vacancies to female workers; offer appropriate training to women without discriminating against male employees; and to provide equal pay for work of equal value to all employees. (Alperson, 1993: 36)

Unions also encourage women to campaign for election as shop stewards and other leadership positions within the union. Further, education and training is provided for women and women are also appointed as organiser's and these unions campaign to have employers grant women paid time off to attend to union matters, discourage and discipline offenders in sexual harassment cases, increase the number of and budget for women's forums and seminars and discuss women's matters at all union meetings.

Alperson (1993: 19) is of the opinion that *"Companies would do well to identify and nurture talented women - black and white - for positions traditionally held by men. One way of making companies more competitive is to give all employees the opportunity to realise their full potential."*

Snape, Redman and Bamber (1994: 160-161) say that where women do break through into managerial jobs, they tend to be concentrated in particular functions, such as personnel and training, administration and public relations. Women managers tend to work in specialist support roles, and are less likely than men to be found in line and general management and also tend to be in sectors which employ large numbers of women. Further, studies have shown that women managers tend to be younger than their male colleagues, to have been with their current employer for a shorter period of time, are more likely to be single and childless, and have

better formal qualifications. The findings on marital status and children are particularly significant, and are likely to reflect the unequal distribution of domestic responsibilities, with marriage and family responsibilities being much more of a career disadvantage for women than for men.

Mumford (1991: 364) states that many female managers operate from *"values, assumptions and perspectives which reflect their female grounding, but are not widely represented or accepted in organizational life. This creates conflicts and pressures, and many describe themselves as working in 'hostile environments.'"*

## 2.6 FACTORS INFLUENCING THE IMPLEMENTATION OF AA

In this section the following factors influencing AA will be discussed: culture; stereotyping; discrimination in job advertising; specific problems with the advancement of women and various legal aspects to be considered.

### 2.6.1 CULTURE

The differences in culture between the various race groups in SA is vast and a factor of great importance when attempting to merge these ethnic groups in the workplace.

Not only do different peoples say and do things differently, but similar expressions can mean vastly different things to members of different cultures. SA hosts many different ethnic groups and therefore vastly differing cultures. A fact that many Whites overlook, is that there are so many different African ethnic groups within our borders and their cultures differ vastly from each other. These are important differences to take note of when employing people of different cultures. A male, other than the husband, may, for example, not touch a female from certain Indian or Islamic cultures as it is considered an insult - even if he accidentally brushes against her when going through a doorway. Many African people use various methods of saying "please" "may I" or similar saying - some do not use them at all - and mean no disrespect by doing so. It is of vital importance for management to be

aware of differing cultures within the different race groups in one organisation or within the groups out of which they draw their new employees.

Motshabi (1991: 124) contends that *"the future of the whole economy depends partly on how quickly we address cultural diversity. Delay will make it difficult to develop our people and organisations so as to achieve the growth rates necessary to make a viable economy. Failing this, the stability of our entire society may be imperilled."*

Patrick Makura (1996: Interview), Senior Personnel Officer in the Cape Town City Council is also the Traditional Head of the Makura family in Africa. He is of the opinion that Black women have far more to overcome than their Coloured and Indian counterparts due to their cultural heritage. The woman has no place in traditional black families other than that of a mother. She has no status at all.

Culture also plays a vital role in the success or failure of an affirmative action programme aimed at bettering the position of women. One must pay particular attention to the cultural aspects of women in the various ethnic groups. A woman from certain Black tribes would have different 'problems' to overcome than those of an Indian, Hindu, Coloured or white woman when it comes to employment or promotion within a career.

Eric Mafuna (1993: 18) states many international ideas on affirmative action issues are being mooted for adoption in South Africa and these are doomed to fail. There are pronounced cultural differences between black and white people which means that international solutions and standards cannot work here. Affirmative action must be seen to be about the development and advancement of people. Although cultural differences are often perceived to be negative, they could be used in a positive way to interest people in each other and their ways of life.



## 2.6.2 STEREOTYPING

Mumford (1991: 364) is of the opinion that women are continually affected by disparity in social power which become more apparent when women, placed in one-down positions because of their gender, find that others reject their use of authority power because it contravenes stereotypes of femininity, or they are passed over for promotion despite relevant qualifications and experience.

James Brook (1991: 82) discusses the findings of a study done in four municipalities in the Western Cape on the attitudes of white civil servants to the upward mobility of Africans and so-called Coloureds: *"Male and female white civil servants differed significantly with respect toward African advancement, ... males being more negative than females. No significant difference was found between male and female attitudes toward 'Coloured' advancement."*

Snape, Redman and Bamber (1994: 159) argue that women often miss out on employment and promotion opportunities. This is due to a number of reasons such as the indoctrination of females over many years. This indoctrination has led many females to believe that they are inferior to the male and are incapable of doing the same or similar work to them; that they are the weaker sex (mentally and physically); that they are only good as mothers, home-makers and sometimes wives and the belief that they should not challenge the male domain in the workplace.

One of the worst types of stereotyping is seen in the commonly held viewpoint has always been that women should stay at home, give birth, feed and nurture the family. Many males still hold this viewpoint and have fears about allowing women into the workplace as they will run their homes from the office telephone, do all shopping from the office, continually require maternity leave or leave to look after sick children and generally disrupt the office by being a mother/wife out of her natural element. A compromise could be found in encouraging and providing training and opportunities for women to run businesses from home.



Myra Alperson (1993: 36) maintains that women are disadvantaged from the moment they enter school until they enter the job market, the odds are stacked against their being able to develop their full potential. On the shop floor, their needs often take second place to those of male workers. They earn less and invariably have less job security as they juggle family responsibilities with work, and often face sexual harassment.

Among the people that Alperson (1993: 36) interviewed during her research were experts in job placement, career development, management and women's concerns and they all noted constraints on women's development. These are briefly set out below:

- South African women are socialised into being submissive from a young age and are generally shy and unambitious.
- Teenage girls are not encouraged to study subjects like mathematics, science and management subjects even though these subjects provide a foundation for professional development.
- Many female employees normally have to face one of two types of men in the workplace; those who feel that they are doing women a favour by giving them less work to do as they have household chores to do or those who will not acknowledge a female's equality or potential.
- Few companies offer training to female employees even though most profess to encourage women's advancement.
- Black women are often even further disadvantaged in that they face gender and racial prejudice.

The Green Paper on Employment and Occupational Equity (1996(a): 13) states that "In South Africa, differences in income and status in the economy go hand in hand with race and gender. Generally, the data show that substantial inequities still exist between Blacks and Whites and men and women, even when they have similar occupational status and education. The figures underscore the need to define inequities, not in terms of race or gender, but in terms of how race and gender work

*together. Effective policies cannot simply apply sweeping measures to all Black people or all women. Rather, we must first define the nature of the inequalities faced by different groups, and the extent to which these inequalities arise within the labour market. Only then can successful measures on employment equity emerge."*

The Green Paper (1996(a): 14) further show the inequities within race and gender in that "A White man was 5000 times as likely to be in top management as an African woman. Generally, Whites were heavily over-represented in the professions and management, and virtually none were elementary workers. White women dominated in secretarial work. Black women were most heavily over-represented among self-employed elementary workers and the unemployed. Black men were over-represented only among shop floor workers."

Women have further problems to face. The Green Paper (1996(a): 23) use the following to illustrate this: "Women typically face the burden of unpaid household labour in addition to income-generating work. A rigid organisation of work may prevent them from performing well, since they must take time off for child care and other family responsibilities. For many women, household responsibilities leave no time for paid employment at all. In most countries, remedying gender imbalances has meant restructuring work organisation to give greater flexibility in balancing paid work against caring responsibilities."

### 2.6.3 DISCRIMINATION IN JOB ADVERTISING

Linda Human and Donovan Shaw (1991: 136) quote that a "*tendency for sex bias in job advertising ... existed.*" The wording of advertisements for previously male-dominated and managerial positions invariably read "He shall ..." The fact that a number of women qualify for consideration for these positions is not even contemplated.

Pierre Wolmarans (1997:28) discusses discrimination as set out in the new **Labour Relations Act, 1995, (Act 66 of 1995)** and points out that the word employee must

be read and understood to include an applicant for employment. He points out that it would be residual unfair labour practice if advertisements for employment read in the order of "A gentleman of 30 years or older is required ... [or] ... A German speaking person is required." These discriminate on the grounds of age, gender and linguistic abilities. The latter could, however, be fairly easily proven to be job related. He points out further that the Act is already slightly anomalous in that "*an employer is not allowed to discriminate in appointing new employees, but is allowed to conduct employment practices and policies in an endeavour to uplift previously disadvantaged people which, in itself, could be a form of discrimination against so-called non-disadvantaged people.*"

Gavin Pieterse (1995: Interview) also reiterates this problem and points out that, as job advertising is not isolated, many other areas have to be investigated, for example, job descriptions are written, interviews are conducted and the way people are selected and promoted. These processes will all have to be overhauled and new ones put in place because "*we are working within a national framework of a Constitution of human rights and we cannot discriminate against anyone for whatever reason. We've got to take our cue from the broad constitutional guidelines, in terms of our processes so that the process of auditing, overhauling and rewriting the selection and recruitment processes can be amended.*"

Snape, Redman and Bamber (1994: 163) say that "the crowding of women into particular occupations and industries may not be wholly attributable to their own occupational choices; employer's recruitment practices also have a role to play."

Many firms, whether public or private, do not realise how biased their job advertising appears and, unfortunately, many are going in the wrong direction to correct this anomaly. Others apply reverse discrimination, such as those who specify only candidates with Xhosa will be considered thereby discriminating against others - even those who have also been discriminated against in the past.

#### 2.6.4 EXPERIENCE AND MERIT vs STAFF DEVELOPMENT

The two principles, Affirmative Action and Merit, do not necessarily contradict each other, but, as most AA legislation does not define merit, it does leave it open to continuing debate as to what the correct meaning of merit is. Ronalds (1991: 67-68) states further that *"Affirmative action does not mean that a woman should be appointed automatically to a position in order to increase the number of women in that occupation and to present a positive image on the public report. It does mean that the prevailing culture of the organisation needs to be closely examined so that decisions are being made on a sound personnel basis and not on beliefs about which person will fit that particular, usually male dominated corporate mould."*

Ronalds (1991: 68) concludes this by saying that *"for affirmative action to be effective, the merit principle and the many hidden subjective elements it incorporates needs to be reassessed and probably rewritten so that the best applicant for a job is determined on criteria which are free from gender bias and are based on skills, qualifications and capacity to perform the job."*

Thus, for the purposes of this research, merit must be seen as a measure of exemplary conduct within the work and the ability to perform all required functions of the specific job well. Staff development, on the other hand, must be seen as a programme of training and development aimed at bettering the position of individual staff and to equip them to excel in the performance of their job functions. Staff development can therefore be seen as a stepping stone towards being able to be promoted on merit.

In the opinion of the writer, merit should have a far greater status than is presently the case. If a person is able to perform the required job functions, he/she should be able to be advanced to the vacancy. Merit by definition encompasses the ability to perform and recognition should be given to that fact.

### 2.6.5 LEGISLATIVE & CONSTITUTIONAL STATUS OF WOMEN

The position of the Government is that it *"proposes to appoint a Gender Equity Task Team led by a full-time Gender Equity Commissioner who shall report to the Director General. ... [and] will study and advise the Director General on all aspects of gender equity in the education system, in particular:*

- (1) identify all means of correcting gender imbalances in enrolment, dropout, subject choice, career paths, and performance*
- (2) advise on the educational and social desirability and legal implications of single-sex schools*
- (3) propose guidelines to address sexism in curricula, textbooks, teaching, and guidance*
- (4) propose affirmative action strategies for increasing representation of women in professional leadership and management positions, and for increasing the influence and authority of women teachers ..."* (RSA, 1995: 46) NOTE: This Gender Commission was subsequently established.

Section 195(1)(i) of the Constitution, states that the *"Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation."* (RSA, 1996(d): 83)

### 2.6.6 PROBLEMS WITH THE ADVANCEMENT OF WOMEN

Pieterse (1995: Interview) reiterates the stereotypical mindset of men while discussing the employment of women in the Traffic Control Branch as an example: *"In order to bring women in into a very male macho kind of uniform branch, you've got to prepare that environment. Teach people about their sexist behaviour, begin a process of transforming that behaviour to make it more acceptable. Biologically there is no reason why women can't do the job but it's just been a convenient excuse. The most important, the most dangerous aspect of bringing women in, is the mindset of the men - the way they see women, the way they treat them, and that has*

*to start with the most senior person who has to put the processes, the structures and disciplines in place - a code of conduct - for people to adhere to."*

Ronalds (1991: 3-8) states that for women to take full advantage of all available opportunities, there needs to be an equal allocation of domestic responsibilities. Both men and women need to accept that all the duties and tasks associated with running a home are not automatically the preserve of the female members of the household. Domestic relations are also not the only problems that a women has to overcome when entering the job market and Ronalds cites access to employment, concepts of equality and education as other problems.

#### 2.6.7 SUMMARY

Gender discrimination goes hand in hand with inequalities in income and status and is not just a matter of 'waving a magic wand' and all will be well. The attitudes and mindset of people, both male and female, must be changed so that they come to the realisation that women are capable of doing the same work men do and vice versa. There changes required in both the education system and in the workplace which would assist women to advance to higher levels and, for those employers who employee staff who are parents and home-makers as well as employees, the changes in the workplace should encompass aids to help them make a success of both - a happy and contented staff member is an asset to any organisation.

A well-organised AA program would identify and encompass many of these changes which could enhance the working environment and lead to a better equipped and qualified workforce who work together to promote the work of the organisation in which they are employed.

This chapter outlined AA in general, how it should be implemented and looked at AA for women. The following chapter broadly looks at our Constitution and compares it which the constitutions of Australia and Canada.

1.3

## **CHAPTER 3: THE CONSTITUTIONAL AND LEGISLATIVE PROVISIONS FOR AFFIRMATIVE ACTION**

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### **3.1 INTRODUCTION**

The previous chapter has dealt with the theoretical provisions of AA. The aim of this chapter is to discuss the various Constitutional and legislative provisions for Affirmative Action. The title of this chapter suggests that it will present a comparative overview of AA using a country by country analysis. The countries are Australia, Canada and South Africa. The purpose of this comparison/analysis is to determine broad trends towards AA in these countries.

### **3.2 CONSTITUTIONAL PROVISIONS**

The Human Rights clauses of the Constitutions of the three countries are discussed to ascertain what provisions are made in these Constitutions for affirmative action, especially in respect of women.

#### **3.2.1 AUSTRALIA**

The Australian Bill of Rights contains the discrimination clauses governing peoples and concerns in Australia.

##### **3.2.1.1 THE DISCRIMINATION CLAUSES IN THE AUSTRALIAN BILL OF HUMAN RIGHTS**

The discrimination clause in Australia's Bill of Rights is set out in section 9 (1): *"It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has*



*the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."* (Bailey, 1990: 188)

### 3.2.2 CANADA

Canada has two Acts which contain relevant Human Rights clauses; the **Constitutional Amendment Bill** and the **Ontario Human Rights Code**.

#### 3.2.2.1 THE CANADIAN CONSTITUTIONAL AMENDMENT BILL, JUNE 20 OF 1978

Section 9 of the **Constitutional Amendment Bill, June 20 of 1978** of Canada sets out their discrimination clause: *"The rights and freedoms declared by sections 6, 7 and 8 of this Charter shall be enjoyed without discrimination because of race, national or ethnic origin, language, colour, religion, age or sex"* [Sections 6 to 8 give the various rights in detail, e.g. political and legal rights and freedoms, freedom of opinion, speech, etc.]. (Bayefski, 1989: 347-349)

#### 3.2.2.2 ONTARIO HUMAN RIGHTS CODE

This Canadian Human Rights Code also gives the provisions for prevention of discrimination on certain grounds.

Berlin and Pentney (1987: 13.55-13.56) quote the preamble to this code as providing a guide. It encompasses the recognition of the intrinsic dignity and the equal undeniable rights of all human beings is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations and it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin. Further, these principles have



been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to enact a measure to classify and extend such enactments and to simplify their administration.

Section 4(1) (g) of this code states that:

" 4(1) No person shall,

...

(g) discriminate against any employee with regard to any term or condition of employment,

because of race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin of such person or employee." (Berlin & Pentney, 1987: 13-55)

### 3.2.3 SOUTH AFRICA

Chapter 2 of the **Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)** sets out the human rights clauses for all citizens and the Constitution as a whole provides the formal framework that regulates the relationship between all role players, i.e. individuals, the state and society.

#### 3.2.3.1 THE SOUTH AFRICAN CONSTITUTION'S DISCRIMINATION CLAUSES

Chapter 2 Section 9 states that "(1) Everyone is equal before the law and has the right to equal protection and benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. (4) No person may unfairly discriminate directly or

*indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination. (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair."*

### 3.2.4 COMPARATIVE OVERVIEW

Many countries have adopted forms of affirmative action and equal employment opportunity legislation over the last twenty years. If one compares the **Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)** with that of Canada and Australia, one sees vast similarities. These similarities are set out below:

The wording of each of these country's clauses are worded slightly differently from one another, but the basic areas of discrimination are the same. The SA clause includes **sexual orientation, disability and conscience, belief and culture** which are not explicitly mentioned in all the others. Canada mentions **creed, ancestry, nationality and place of origin** which encompasses culture. They further mention **marital status** as a grounds for discrimination which is forbidden. The Australian Bill of Rights covers any field of discrimination with the words "*which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life.*" [own emphasis]

Leon E. Trakman (Kruger & Currin, 1994: 28-29) states that community rights in South Africa and Canada are basically similar, but they serve different interests. These Canadian community rights encompass, inter alia, the rights of First Nations Peoples (aboriginals) to self-determination and those of Quebecers to status as a 'distinct society' and are readily distinguished from the assertions of a white minority in South Africa in a number of ways. These are, firstly, the communities that assert their distinctiveness in Canada are culturally, economically and socially disadvantaged vis-à-vis other communities, notably English speaking Canadians; secondly, to affirm the communal right of Quebec to 'distinct' status within Canada,

or First Nations Peoples to 'self-determination', is a political pre-requisite to Canada's future; thirdly, recognition of the rights of disadvantaged communities is increasingly reflected in proposals before the international community. However much the ANC Constitutional and Legal Committee frames constitutional rights as individual freedoms, it expects the State to educate the uneducated, house the homeless, and affirm the rights of women, children and the disadvantaged as categories. It affirms these as communal, not simply individual, rights.

All three countries have built-in clauses that prevent discrimination on the grounds of race, ethnic or social origin, colour, language, religion, age or sex.

The SA Government has also intimated that AA policies are to be adhered to in this country and that legislation will be implemented soon. It is the personal opinion of the writer, that it would be safe to assume that our AA legislation will take on similar lines as that of Canada and Australia.

### 3.3 LEGAL ASPECTS OF AFFIRMATIVE ACTION

This section focuses on the anti-discriminatory laws of Australia, Canada and South Africa which specifically deal with AA for women.

#### 3.3.1 AUSTRALIA

Jocelyne A. Scutt (1990: 44-45) states that *"One major function of anti-discrimination legislation is to provide remedies for discriminatory actions in individual complainants. The complainant-handling establishes, through a process of investigation and negotiation between the parties, assisted by the intervention of a government agency, an avenue for the complainant to assert a position that certain described actions are unlawful and must be addressed by the respondent to the complaint. ... Equal access to employment and education are central to economic status, and to general psychological well-being."*

### 3.3.1.1 THE AUSTRALIAN AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN) ACT 1986

This Act defines affirmative action as *"A systematic means, determined by the employer in consultation with senior management, employees and unions of achieving equal employment opportunity for women. Affirmative Action is compatible with appointment and promotion on the basis of merit, skills and qualifications. It does not mean women will be given preference over better qualified men. It does mean men may expect to face stiffer competition for jobs. This is not discrimination."* (Australian Government House, 1986; Vol 1: 3)

The then Australian Prime Minister, Bob Hawke, said in his speech on the second reading of the Bill: *"This legislation is necessary to ensure that all large employers take seriously their obligations to their women employees. The changing role of women in our society is reflected, to a large extent, in the changing patterns in the workforce. The Government is determined that women should be able to enter and compete in the labour market on an equal footing with men and that outdated prejudices or conventions should not prevent them from fully participating. Neither individual employers nor the nation can afford to waste the valuable contributions which women can, and do, make to our economy ... I want to stress that the Government's affirmative action legislation does not propose positive discrimination or reverse discrimination. We are totally opposed to the use of quotas and this legislation, by stating that all actions are to be based on merit, makes this clear."* (Bailey, 1990: 166)

This Act sets out eight steps for the implementation of an affirmative action programme.

Ronalds (1991: 28) sets out these steps:

*"One: Issuing a policy statement*

*Two: Appointing the appropriate staff [to run the programme]*

*Three: Consulting with trade unions*

- Four: Consulting with employees*
- Five: Analysing the employment profile*
- Six: Analysing employment policies and practices*
- Seven: Setting objectives and forward estimates*
- Eight: Monitoring and evaluation"*

These steps are important if one is to have a successful programme.

Let us look at each of these steps in more detail:

#### 3.3.1.1.1 ISSUING A POLICY STATEMENT

The issue of statement to the employees should be done *"by a senior officer concerned with the management of the relevant employer, of a statement to the effect that the employer, in accordance with the Act, commenced the development and implementation of an affirmative action programme on a specified day, being the operative day in relation to the employer."* It has been found in Australia and North America that, if the programme is to become accepted and effective within a specific workplace, senior management must openly and frequently demonstrate their support for the programme. This policy statement must also be signed by the most senior executive in the organisation. (Ronalds, 1991: 31-33)

This statement should briefly and concisely explain the aim of the programme as well as the methods to be used. This should be issued once the employer has a clear idea of the direction in which the company is going in relation to affirmative action. It is, however, important to note that once this has been issued, it is **not** the final part in this step of the process. The policy statement should be reviewed regularly to *"ensure that its contents match activities being undertaken under the programme. It should be reissued on a regular basis and a copy should be given to all new employees. The statement should be republished regularly in internal and external publications and the organisation should promote itself as an affirmative action employer."* (Ronalds, 1991: 33)

As this statement has to be communicated to all staff and many companies have a proportional functional illiteracy within their ranks, there are many factors to be considered. Written media, video tapes, spoken media through tape recorders, plays etc. can be used.

### 3.3.1.1.2 APPOINTING THE APPROPRIATE STAFF

This section deals with the appointment of the staff who will run the AA programme. Section 8(1)(b) of this Act states that action should be taken to *"confer responsibility for the development and implementation of the programme (including a continuous review of the programme), on a person or persons having sufficient authority and status within the management of the relevant employer to enable the person or persons to develop and implement the programme."* [own emphasis] (Ronalds, 1991: 34)

Some of the questions most often raised is whether the Affirmative Action Officer should be a full-time or part-time appointment and whether it should be an internal or external appointment. The answers to these depends on a number of factors. It would seem advisable to have a full-time appointment in the initial stages of the programme, or, as Ronalds (1991: 36) sees it, *"at least be able to give over 80 per cent of her or his working time to affirmative action."*

If one has an AA Act like this, which is primarily concerned with women, should a women be appointed? And should it be a permanent appointment? In a case such as this, provided that the woman is suitably qualified, a woman should preferably be appointed. Affirmative action in itself is not permanent but is there until the balance has been redressed. Ronalds (1991: 39) states that *"eventually as the programme is absorbed into the usual planning channels of the organisation the position of Affirmative Action Officer should become redundant. This result may take 10 years to achieve."*

### 3.3.1.1.3 CONSULTING WITH TRADE UNIONS

One of the key aspects negotiated overseas is the question as to whether the programme is a purely personnel issue and therefore the sole prerogative of management or if it is an industrial issue which is part of the management/union relationship. If it is seen as purely the former, it could reduce the future impact of the programme while, being seen as solely the latter, it could become a trade-off between management and unions. As this negotiation is a statutory requirement in Australia, it makes it unnecessary to determine the issue definitively. (Ronalds, 1991: 39)

This AA Act lays down certain requirements for the consultation. Ronalds (1991: 40) states that the *"unions must be consulted on both the development and the implementation of the programme. A situation should be avoided whereby unions are informed at the commencement of the programme, but then there is no follow-up."* There also has to be representation from the union's side. Ronalds (1991: 41) calls for three different representatives who could be involved in the consultation process on behalf of the union: branch officials, job delegates or specifically selected representatives.

It is important that consultation takes place with each trade union which has members affected by the proposal for the development and implementation of the programme.

### 3.3.1.1.4 CONSULTING WITH EMPLOYEES

This process of consultation is there to ensure that potential beneficiaries of the AA programme are involved in the processes which determine the content of such a programme. Ronalds (1991: 42) points out that some employers have difficulties with this step as there are no pre-existing consultation procedures in operation at any level within the organisation and delays can occur when these communication

channels and procedures are set up, especially if the organisation is very hierarchical.

Ronalds (1991: 42-43) states that the most productive method of meeting this legislative requirement appears to be the establishment of a consultative committee which should be comprised of management and trade union and women staff representatives. The latter's representation is necessary as in most workplaces they are not in the positions which would automatically give them access to such a committee. This is important both for the contributions that women employees can make and to ensure that all women employees perceive the programme as being relevant. The committee should act in an advisory role to the Affirmative Action Officer and provide further information and support to that person. Other consultation mechanisms could include the calling of special meetings of either all employees or of women employees.

If meetings are held, care needs to be taken to ensure that all employees are able to present their opinions. This may not happen if professional, technical and semi- or non-skilled workers are all at the same meeting. Most professional women will be used to attending meetings and presenting their views, but it may be difficult for other women to contribute effectively. It should definitely not be assumed that all women employees hold similar views of the organisation, and further the perceived barriers will vary markedly between occupations and areas of work. Questionnaires can be used to ascertain both statistical information and employee perceptions. But these will be ineffective in organisations where functional illiteracy is high.

Ronalds (1991: 43) continues to stress the importance of feedback and/or perceived response to employee input. This can be done by writing articles in in-house newsletters.



### 3.3.1.1.5 ANALYSING THE EMPLOYMENT PROFILE

Section 8(1)(e) of the AA Act states that action should be taken: *"for the collection and recording of statistics and related information concerning employment by the relevant employer, including the number of employees of either sex and the types of jobs undertaken by, or job classification of, employees of either sex."* (Ronalds, 1991: 44)

These statistics would assist an organisation to monitor changes within their employment profile and to ascertain in which direction these changes occur. Ronalds (1991: 44) states that this can assist by being a major pointer to the progress of an AA programme. He states further that it is important that the original profile is accurate and that the subsequent analysis is based on facts and not on a series of assumptions. The findings of the organisation's employment profile should be included in the annual public report and a more detailed analysis in the confidential report.

### 3.3.1.1.6 ANALYSING EMPLOYMENT POLICIES AND PRACTICES

Ronalds (1991: 52) quotes section 8(1)(f) of the AA Act by saying that *"action should be taken to consider policies, and examine practices, of the relevant employer, in relation to employment matters to identify -*

- (i) *any policies or practices that constitute discrimination against women; and*
- (ii) *any patterns (whether ascertained statistically or otherwise) of lack of equality of opportunity in respect of women."*

He continues by pointing out that the extent and detail of an organisation's personnel policies and practices will vary. These include policies and practices covering promotion and regrading; selection; recruitment; training; conditions of service and many others.

### 3.3.1.1.7 SETTING OBJECTIVES AND FORWARD ESTIMATES

Ronalds (1991: 59) states that this step *"is designed to incorporate normal business practices of determining a future path, which will be achieved within a stated time [and] ... will comprise the aims which will change the profile of women's employment through a variety of means. It enables the organisation to focus a range of actions to increase the opportunities for women and to formulate an affirmative action programme within the limits and capacities of their own structure. The process of setting objectives and forward estimates and ensuring their achievement should be spread through all relevant sections of the organisation, and not be the sole responsibility of the Affirmative Action Officer."*

Ronalds (1991: 60-62) gives section 8(3) of the AA Act's definitions of (1) an 'objective': *"a qualitative measure or aim, expressed as a general principle, designed to achieve equality of opportunity for women in employment matters, being a measure or aim that can reasonably be implemented by the relevant employer within a period. ... [and (2)] ... 'forward estimates' as meaning a quantitative measure or aim, which may be expressed in numerical terms, designed to achieve equality for women in employment matters, being a measure or aim that can reasonably be implemented by the relevant employer within a specified time."*

These forward estimates are normally expressed as a figure or a percentage and must, of necessity, be realistic. An example cited by Ronalds (1991: 64) is that of a forward estimate whereby an increase of 50% is sited for employing female engineering graduates, when the actual percentage females graduating in the engineering field does not reach that level.

A further important factor is the setting of a timetable for these objectives and forward estimates. This *"timing should be realistic and allow for the full support mechanisms to be in place prior to the activity being undertaken [and] should specify the individual or section which will be responsible for implementing them. It is important that this responsibility is spread throughout the organisation, and that the*

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34

*Affirmative Action Officer is not expected to perform these duties for all future action plans.* (Ronalds, 1991: 64-65)

### 3.3.1.1.8 MONITORING AND EVALUATING

This step is necessary to assess the achievement of the objectives and forward estimates. Ronalds (1991: 65) points out that the *"process of annual monitoring and evaluation of the previous year's goals and their achievement is important for two reasons. First, to assess where the programme has been successful and achieved what was nominated or to consider the reasons for any shortfalls and the methods for attending to them. Secondly, this process is the basis for setting the forthcoming year's objectives and forward estimates."* He continues to say that this process is important as it *"determines the nature and course of the [long-term affirmative action] programme."*

#### 3.3.1.1.8.1 METHODS OF MONITORING AND EVALUATING

One must first compile the results of the previous year's programme. Secondly, assess the achievements of the objectives and forward estimates against those of the previous year's. Depending on the results of the previous year, as to whether one strengthens, weakens or retains these objectives and forward estimates. One must further analyse the reasons for not meeting them, as it could well have been factors outside the control of the organisation which might or might not re-occur. Knowledge of this is essential if one is to make the correct adjustments to the objectives and forward estimates.

Continual assessment is necessary so as to ensure that the organisation is on the correct path to ultimately reach the goals set out - or to ascertain whether these goals need modifying. Ongoing consultation with trade unions and employees may well highlight issues to be addressed prior to the final setting of the new year's objectives and forward estimates.

### 3.3.1.1.8.2 APPLICATION OF THE MERIT PRINCIPLE

Ronalds (1991: 67) quotes section 3(4) of the AA Act: *"Nothing in this Act shall be taken to require a relevant employer to take any action incompatible with the principle that employment matters should be dealt with on the basis of merit."* He explains: *"The inclusion of this provision was the product of the debate in Australia on the concept of quotas and the argument that the legislation would 'force' employers to recruit or promote unqualified women over qualified men. Opponents to the legislation alleged that it would dilute or destroy the principle of merit"*

### 3.3.1.1.9 THE DIRECTOR OF AFFIRMATIVE ACTION

**The Australian Affirmative Action (Equal Opportunity for Women) Act 1986 (AA Act)** creates the statutory position of the Director of Affirmative Action to administer the legislation. This director is independent and reports directly to the Minister for Industrial Relations and has the powers of a Secretary of a government department.

### 3.3.1.2 THE PUBLIC SERVICE ACT (AMENDED IN 1984 BY THE PUBLIC SERVICE REFORM ACT)

Section 22B of this Act became operative on 1 October 1984 and was inserted to provide a legislative base for equal employment opportunity programmes. Prior to this, there were voluntary programmes in Commonwealth Government Departments and in some of the statutory authorities. This Section 22B covers women and *"people in 'designated groups'"*. The latter term meaning Aboriginal and Torres Strait people, migrants whose first language was not English, the physically or mentally disabled and any other declared class of person. (Ronalds, 1991: 96)

This EEO programme has six steps:

- (a) *"Examining employment practices to identify any discriminatory patterns or practices;*
- (b) *elimination or amelioration of these;*
- (c) *informing officers of the programme;*
- (d) *consultation with staff organisations;*
- (e) *collecting and recording information including statistical information;*
- (f) *assessing the effectiveness of the programme and following any guidelines issued."* (Ronalds, 1991: 96)

The bodies covered by Section 22B was extended in June 1986 to cover the Commonwealth Teaching Service, Australian Federal Police, the Australian Security Intelligence Organisation and the Australian Broadcasting Corporation.

### 3.3.1.3 THE COMMONWEALTH'S SEX DISCRIMINATION ACT 1984 AND AFFIRMATIVE ACTION ACT 1986

Bailey (1990: 150) describes the latter Act as *"a relatively short measure, and in effect devoid of any enforcement provisions. However, when coupled with the Affirmative Action (Commonwealth Employment) Act 1987, it substantially covers the corporate work force of Australia with provisions designed to ensure that companies and Commonwealth agencies adopt affirmative action plans and programmes and report the results on a regular basis."*

The Sex Discrimination Act covers the whole spectrum of discrimination against women. As Bailey (1990: 153) puts it: *"It is probable that all the provisions of the Sex Discrimination Act could be justified, in their application to women, by reference of the Convention for the Elimination of All Forms of Discrimination Against Women"*.

This Act covers a wide field, the most important of which is employment. The three grounds covered by the Act are sex, marital status and pregnancy with sexual harassment added as a special form of discrimination. (Bailey, 1990: 154-155) Throughout the Act, the person who discriminates against another is termed the discriminator, whilst the one against whom he/she discriminates is termed the aggrieved person.

These four grounds are defined in the Act as set out in the next three paragraphs.

#### 3.3.1.3.1 SEXUAL DISCRIMINATION

Section 5 of the Act defines discrimination on the grounds of sex, giving meanings for 'direct' (section 5(1)) and 'indirect' (section 5(2)) discrimination:

The discriminator discriminates against the aggrieved person on any of the following grounds: either the sex of the aggrieved person; any characteristic that generally appertains to persons of the same sex; or a characteristic that is generally imputed to persons of the same sex as the aggrieved person and the discriminator treats the aggrieved person less favourably than, in circumstances that are the same or not materially different, the discriminator treats or would treat a person of the opposite sex.

Further, if the discriminator discriminates against the aggrieved person on the ground of the sex of the aggrieved person if the discriminator requires the aggrieved person to comply with any requirement or condition with which a substantially higher proportion of persons of the opposite sex to the aggrieved person comply or are able to comply; which is not reasonable having regard to the circumstances of the case; and with which the aggrieved person does not or is not to comply. (Bailey, 1990: 158)

### 3.3.1.3.2 DISCRIMINATION ON THE GROUNDS OF MARITAL STATUS

Section 6(1) and (2) define the direct and indirect discrimination on the grounds of marital status:

A discriminator discriminates against the aggrieved person on the ground of the marital status of the aggrieved person if, he/she refers to either the marital status of the aggrieved person; a characteristic that appertains generally to persons of the marital status of the aggrieved person; or a characteristic that is generally imputed to persons of the marital status of the aggrieved person and further if the discriminator treats the aggrieved person less favourably than he/she treats or would treat a person of the opposite marital status, he/she is said to have discriminated against the aggrieved person on the grounds of his/her marital status.

In addition to this, the discriminator discriminates against the aggrieved person on the ground of the marital status of the aggrieved person if he/she requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons of the opposite marital status to the aggrieved person comply or are able to comply; which is not reasonable having regard to the circumstances of the case; and with which the aggrieved person does not or is not to comply. (Bailey, 1990: 159)

### 3.3.1.3.3 DISCRIMINATION ON THE GROUNDS OF PREGNANCY

Section 7 defines this form of discrimination in a more restricted way, which means that 'reasonable' discrimination is allowable.

The discriminator discriminates against the aggrieved person on the ground of the pregnancy of the aggrieved person if he/she refers to the pregnancy of the aggrieved person; a characteristic that appertains generally to persons who are pregnant; or a characteristic that is generally imputed to persons who are pregnant; the discriminator treats the aggrieved person less favourably than, in circumstances that

are the same or not materially different, the discriminator treats or would treat a person who is not pregnant; and/or the less favourable treatment is not reasonable in the circumstances.

Further the discriminator discriminates against the aggrieved person on the ground of the pregnancy of the aggrieved person if the discriminator requires the aggrieved person to comply with a requirement or condition with which a substantially higher proportion of persons who are not pregnant comply or are able to comply; which is not reasonable having regard to the circumstances of the case; and/or with which the aggrieved person does not or is not to comply. (Bailey, 1990: 161)

Bailey (1990: 161) points out that this brings two important areas of rights together: *"There is the right of the pregnant woman to continue in employment, or to receive goods and services without discrimination; but against that is her right to be treated in a way that takes proper account of the constraints associated with pregnancy, and the right of the child she is bearing to adequate care and a good start in life."*

#### 3.3.1.3.4 SEXUAL HARASSMENT

Sections 28 and 29 makes it unlawful to harass a person sexually as employees or as students which covers making sexual advances, requests or statements. Subsections (3) and (4) define the unlawful act in relation to employment.

A person shall be taken to harass sexually another person if the first-mentioned person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person, or engages in other unwelcome conduct of a sexual nature in relation to the other person, and the other person has reasonable grounds for believing that a rejection of the advance, a refusal of the request or the taking of objection to the conduct would disadvantage the other person in any way in connection with the other person's employment or work or possible employment or possible work; or as a result of the other person's rejection of the advance, or refusal of the request or taking of objection to the conduct, the other person is



disadvantaged in any way in connection with the other person's employment or work or possible employment or possible work.

A reference in sub-section (3) to conduct of a sexual nature in relation to a person includes a reference to the making, to, or in the presence of, a person, of a statement of a sexual nature concerning that person, whether the statement is made orally or in writing. (Bailey, 1990: 162)

#### 3.3.1.4 THE EQUAL EMPLOYMENT OPPORTUNITY (COMMONWEALTH AUTHORITIES) ACT 1987

This Act is the result of the Opposition moving an amendment during the debate on the AA Act to extend it to cover Commonwealth statutory authorities. The Government did not accept the amendment but instead passed separate legislature. (Ronalds, 1991: 96-97)

This Act, together with the Affirmative Action (Equal Employment Opportunity for Women) Act 1986, introduce various requirements for the progress of affirmative action programmes for women. Some of the states like New South Wales, Victoria and Western Australia have included provisions to cover State employees in their AA legislation. Unfortunately, not all States have this and some have passed separate legislation for State employees. In Australia, great efforts have been made to ensure that AA is seen as desirable and an economically rewarding operation. (Bailey, 1990: 164-165)

This 1987 Act has the same coverage as the Public Service Act, while the 1986 AA Act covers women only. The contents of the EEO programme is basically the same as those under the AA Act, except that the Authority can elect whether to report annually to the Public Service Commission or to their Minister. Most choose the latter. The Act covers statutory authorities such as Telecom Australia, Australian Post, Australian Airlines, Qantas and the Commonwealth Bank. (Ronalds, 1991: 97)

### 3.3.2 CANADA

The Canadian Human Rights Act contains anti-discrimination in employment clauses covering the following topics with the section number given in brackets: hiring, firing, conditions of employment [7]; advertising of posts, application forms, inquiries about employment [8]; union membership [9(1)]; employment opportunities [10]; equal pay [11(1)] and harassment/sexual harassment [13.1]. All these, with the exception of section 11(1) cover discrimination on the grounds of race, national or ethnic origin, colour, religion, age, sex, marital or family status, mental/physical disability and pardoned conviction. Section 11(1) only covers equal pay discrimination on the grounds of sex. Various other Acts and Ordinances cover discrimination in the various states. Further coverage is given in the Canadian Charter of Rights and Freedoms (1982) and the Canadian Bill of Rights (1960). (Berlin and Pentney, 1987: 15-2 to 15-21)

The Canadian Human Rights Commission (Undated: 1-2) entitles all individuals to equal employment opportunity without regard to: *race or colour; national/ethnic origin; religion; age; family/marital status; sex (including pregnancy or childbirth); pardoned conviction; disability (either physical, mental or as the result of dependence on alcohol or drugs)* and state further in Section 8 of the Act that "it is discriminatory practice (a) to use or circulate any form of application for employment, or (b) in connection with employment or prospective employment, (i) to publish any advertisement, or (ii) make any written or oral inquiry that expresses or implies any limitation, specific or preference based on a prohibited ground of discrimination" or to check on certain factors in the interview, for example: *"height and weight requirements are often not adequate measures of physical strength and may act to screen out women or some racial groups who tend to be smaller in stature."*

### 3.3.3 SOUTH AFRICA

Norman Kemp (1997: 26) said that *"Although we do not yet have affirmative action legislation as such in South Africa, the proposed Employment and Occupational Equity Bill, once promulgated, will force employers to speed up the process of diversifying their work force by way of affirmative action."*

The Government of National Unity has proposed that an affirmative action policy be adopted in South Africa. Their 5th Draft Discussion Paper on Affirmative Action and Employment Equity (RSA, 1996(b) 8) states that: *"In the context of South Africa, gender discrimination must be addressed as an integral part of the overall labour market programmes of affirming the rights of effective participation of the hitherto disadvantaged groups in society. Policy would be based on the need to accelerate the rate of gender integration into the hitherto segmented workplace. The policy measures have to ensure that gender affirmation does not lead to gender stereotyping, whereby the genuine achievements of members of the feminine gender would be regarded as products of token recognition. Such policy measures must be able to distinguish between programmes of gender affirmation for black women as opposed to those pertaining to white women. The guiding factor in this regard being the extent of deprivation that black women have had to endure in so far as access to meaningful roles of decision-making and participation in the labour market is concerned."*

The Government of National Unity has further instituted the Employment Equity Advisory Council to advise the Minister of Labour on policy and will monitor progress on the attainment of employment equity and representivity.

In an attempt to ensure a swing away from discrimination against women on the grounds of pregnancy, the Policy Proposals for a New Employment Standards Statute (Green Paper) (1996(c): 61) is looking at amendments in the law regarding maternity leave. The discussion is around the Unemployment Insurance Act which allows women who adopt children of under two years of age to take leave equivalent

to maternity leave and state the consideration should be given to the period during which the employment security of an adoptive parent should be guaranteed. It further proposes that an employee may not work for six weeks after the birth of a child (unless her doctor certifies that she is fit to return to work); that she be entitled to four months' maternity leave during which her security of employment is protected; that her maternity leave may be taken at any time in the period starting four weeks before the expected date of birth, or at an earlier date if required for the employee's health and safety and lastly that a woman employed in night work or in work which may be harmful to her or her child is entitled to suitable alternative work without loss of benefit during pregnancy and a year after the birth of her child.

This Green Paper (1996(c): 62) proposes further changes to eliminate certain discrimination on the grounds of sex:

- *"Every employee with more than one year's service is entitled to three days' paid paternity or child-care leave during the year of the birth of the child.*
- *This leave does not accrue if it is not used in any year.*
- *An employer may require reasonable proof of paternity."*

In this chapter the Constitutions and legal provisions for AA in the three countries under review was discussed and in the next chapter the position of AA in South Africa is investigated with specific reference to Central and Local Government and the Cape town City Council

## **CHAPTER 4: AFFIRMATIVE ACTION IN SOUTH AFRICA**

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### **4.1 INTRODUCTION**

In this chapter, the aim is to look at AA in South Africa, concentrating on Central and Local Government in particular.

Many businesses, both large and small, have affirmative action programmes - some planned in detail while others have no or hardly any planning. A number of these businesses owe their success (or lack of it) to the degree of planning and forethought given to the programme. Central and Local Government is no exception.

Colin Douglas (1995: 3) reports on the 1995 Breakwater Monitor research project on 130 major SA organisations done at the University of Cape Town Graduate School of Business. He quotes from the speech of Angus Bowmaker, one of the project leaders, who states that many companies had made affirmative action projections without analysing their internal information. Women who constitute 11 percent of the total management pool, had differing representation in management in different companies with 89 percent in one and 45 percent in the next best performer.

Another executive quoted in the article is Caltex's executive director Seshi Chonco who said that retrenchments should not be necessary to make space for AA appointments if companies adopted a more creative approach. *"There is a very large pool of senior managers in the 54 to 65 age group, and it shouldn't be difficult to encourage some of these people to retire and become consultants and mentors. This would also make it possible for young, white high-flyers to move up from middle-management, leaving space there for affirmative action appointments."* He

concluded by saying that AA should be seen to be providing opportunities, and should not simply be a response to pressure. (Douglas, 1995: 3)

Charles Redcliffe of the National Party (1995: 19) stated that *"The National Party supports affirmative action. Our problem is the way the issue is being handled at the moment, both in the public and private sectors. The primary objective in affirmative action is to correct the historical imbalances regarding employment ratios in terms of race groups enabling the previously disadvantaged to enjoy equal opportunity within the workforce. ... South Africans who were previously classified as coloured, are not considered to be first choice as affirmative action candidates. Their strong view is that in the previous regime they were not good enough to be white and in the new South Africa it looks as if they are not good enough to be black. It is argued that affirmative action is a system that allows the inequities of the past to continue into the present. ... In its policy document, the ANC describes Affirmative Action as 'taking special measures to enable persons discriminated against on the grounds of colour, gender and disability to break into fields from which they have been excluded by past discrimination.'"*

Western Cape Black Management Forum chairman Mpathi Nyewe said that affirmative action could be extended without the retrenchment of white managers if black applicants were favoured for new and vacant posts. Many people also leave voluntarily as they either cannot stand AA or see having a black boss as a dire prospect. (Douglas, 1995: 3)

But there is another side to the Affirmative Action coin: Lumka Funani, who started Lumka Associates which specialises in finding the cream of Blacks professionals and placing them in senior positions, has stated that *"Blacks are abusing the system. They either use it to get ahead in their existing jobs, or to job-hop. ... Some of my clients are opting to employ white people, who are proving to be more responsible. ... It is as if our people have developed a new culture - that of not pitching up. ... As black people we have to accept the responsibilities coupled with empowerment if we want to be taken seriously in this country."* The problems which she encounters

vary from secretaries overpricing themselves to senior executives who either fail to arrive for work or those who let companies down before they even start their term of employment. (Bezuidenhout, 1997:27)

The National Department of Public Works proposes awarding contracts to companies who support AA. Firms would be awarded points and ranked on a roster according to their track record in areas like AA hiring, alliances with black firms, bursary programmes, in-house training and mentorships for disadvantaged groups. The department would also use this roster to pair advantaged and disadvantages firms to work together. Contracts would be awarded to firms on the roster on a rotating basis. The Department would be meeting with other departments to discuss the setting up of this roster. These other departments are trade and industry, labour, education, water and state expenditure. The Department would also set up a contractor support unit to assist small contractors with tender and finance application forms. (Herbert, 1995: 17)

Ruth Mompati, Chairperson of the recently established Commission on Gender Equality is in favour of a system where the corporate world sets targets for the development of women. *"We are expecting that the business world will begin to realise that we must develop a new responsibility for people, setting targets for the development of women in particular. ... It should be the responsibility of the formal sector to train and develop its workforce, with particular emphasis on women."* (Marud, 1995: 3)

The functions of this Gender Commission is to include monitoring and evaluating the policies and practices of state and statutory bodies at all levels and of private concerns; developing educational and information programmes; reviewing discriminatory laws and recommending legislative amendments to Parliament; investigation of any gender-related issues and will have 'search and seizure powers' to use necessary force to enter premises and will be empowered refer cases to the Human Rights Commission or the Public Prosecutor. (Marud, 1995: 3)



## 4.2 CENTRAL GOVERNMENT'S ROLE IN THE CHANGES

The Government of National Unity also has to put into being certain rules and regulations regarding Affirmative Action and Equal Opportunity Employment. They have started the 'ball rolling' with an affirmative action policy and are now in the process of discussing further, more definite legislation on this matter. They have formed the 'Directorate: Equal Opportunities' who will look into certain matters for example: development of a code of practice to support implementation of employment equity measures; setting up of a system of consultation with stakeholders or their organisations; examining employers policies or practices to check on any discriminatory practices or those which disadvantage certain employees; establishment of timetables and performance indicators and machinery for collection and collation of data for employers and preparations of statistics (RSA, 1996(a): 41).

Their 5th Draft Discussion Paper on Affirmative Action and Employment Equity identifies a number of critical areas which need to be addressed: (RSA, 1996(b): 8-9):

Human resources development: In order to expedite the optimal development of all South African women, special programmes of training and development of skills and knowledge shall be developed which shall be aimed at improving the access of women to skills and consequently to employment in those areas where they were traditionally barred.

Labour utilisation: Special programmes shall be developed to improve the employment opportunities of women in the economy.

Integration: Special organisational development programmes will be initiated which shall be aimed at the integration of women into the different work units as acceptable members of the units concerned. There shall be programmes initiated to change the male-gender-centricity of the workplace in all sectors of employment.



**Special gender programmes:** Special programmes shall be developed which are geared towards the alleviation of those problems which women experience in relation to employment. These shall cover the areas of health, child care, legal protection and protection against physical abuse and shall be based on stimulating participation of women in leadership and decision-making in all aspects of social and economic life throughout the country, including both rural and urban women, with special emphasis on those groups of women who have additional problems to those common to all women, for example those who are disabled.

The Minister of Labour, Mr T T Mboweni, in the foreword to the **Green Paper: Policy Proposals for a New Employment and Occupational Equity Statute** (RSA, 1996(a): 1) states that the eradication of all forms of discrimination in the labour market is one of Government's fundamental objectives. It is demanded by the constitution and is an integral part of processes that would help achieve social justice in South Africa.

This Green Paper (RSA, 1996(a): 30-31) further sets out core proposals for employment equity. Analysis of the labour market points to: *"anti-discrimination measures to protect individuals combined with measures to encourage institutional and cultural change by employing organisations; accelerated training and promotion for individuals from historically disadvantaged groups in this context; as far as possible, mediation and arbitration to resolve disputes, with strong legal protection against discrimination and harassment."*

Certain measures which could be implemented to form a part of an employer's equity plans include plans for building physical infrastructure to accommodate women and disabled people; investigation of more flexible hours, work-related day-care and assistance with transport or housing, especially if these measures would help to level the playing ground for applicants or employees from historically disadvantaged groups; special support for cultural diversity in the workplace, for instance differences in clothing, languages and food; consideration of methods to lower formal qualifications for jobs and training; a review of grading structures to

level unnecessary hierarchies and give all employees a realistic career path which is supported by training and improved grievance procedures to minimise the possibility of discriminatory harassment. (RSA, 1996(a): 38)

Many black organisations, in particular the Black Management Foundation, have criticised the pace of affirmative action (Kobokoane, 1996: 1), but can or should it be rushed?

The question to be asked of the Government is has enough been done or will these proposals ever get past the stage of planning? Consider the case of the Gender Commission, although it's setting up forms part of the Interim Constitution, has as yet not been set up. Nomtuse Mbere, leader of the NGO delegation to the Beijing women's conference, is of the opinion that *"There has been a loud silence on the Office on the Status of Women ... [but] a youth commission, which is not provided for in the Interim Constitution, was established a month ago, while the Gender Equality Commission, which was a part of the constitution, was still not up and running."* (Stucky, 1996: 13)

#### 4.3 LOCAL GOVERNMENT IN GENERAL

A Local Government body gets involved in AA for a number of reasons. Johan Louw (1996: 12), Chief Traffic and Licence Officer for Edenvale/Modderfontein outlined some of these reasons in a recent article: *"If local authorities aim to attain their goal of economic growth and profitability, they need to consider these changes [in the composition of the work force] and adopt strategies to facilitate the transition. ... Except for possible legal and political pressures, affirmative action has also emerged for the following reasons: Local Government has an interest in operating in an environment with the least possible levels of unemployment, poverty, violence and crime. Local Government has an interest in the widest possible participation in and benefit from the local economy, and Local Government therefore has a need for all its workers to be skilled and productive."*

Various bodies met during August 1994 and formulated an Agreement for the implementation of AA and Equal Employment Practice within Local Government. These bodies are: the Municipal Employers' Organisation; the Cape Province Local Authorities Employers' Organisation and the Major Cities Employers' Organisation (of which Cape Town is a member) on the one hand and the South African Municipal Workers' Union; the Federation of Municipal Trade Unions; the Democratic Integrated Municipal Employees' Society and the Association of Chief Administrative Officers of Local Authorities on the other hand. (NLRFLG, 1994: 1)

This Agreement is binding on the parties for a period of five years from the signing of the Agreement (that is, in this case until August 1999) or until such time of the composition of the workforce of local authorities reasonably reflect the composition of skills in the relevant labour market.

The parties to the Agreement acknowledged certain needs: these are the need for the Implementation of comprehensive affirmative action, education, training and development strategies to redress historic and existing inequalities, imbalances, prejudices and injustices in the workplace; measures to ensure equal employment opportunity practices in local government; to enforce the right of fundamental equality and opportunity between men and women in employment as well as the right of every person to be protected against employment discrimination on the grounds of race, ethnic or social origin, colour, sexual orientation, age, disability, religion, culture or political affiliation; and to transform local government to a non-racial, non-sexist institution and provide redress to disadvantaged people. (NLRFLG, 1994: 2)

These parties have brought out a 'Guide for the Practical Implementation of the Agreement on Affirmative Action and Equal Employment Opportunity in Local Government'. This Guide quotes from and discusses the various points of the Agreement.

The primary objectives set out in item 3 of the Agreement are the transformation local government into a non-racial, non-sexist institution; ensuring that local authority staff are composed in such a way that it is able to serve effectively and fairly all members of the community with due regard to culture and ethnic diversity; the addressing of imbalances in the composition of the present and future internal labour force with regard to race and gender by means of an Affirmative Action Programme for a limited period, until such time as the staff composition of Local Government is representative of the relevant labour market at all organisational levels; the elimination of all forms of discrimination in the employment situation whether based on race, creed, gender or any other form of stereotyping of persons or groups and the identification and abolition of all barriers and subjective practices that hamper the employment and/or advancement of members of staff, especially those who have been historically disadvantaged by prejudices that favour some and disfavour others. The purpose of the Affirmative Action Programme is to level the playing field thereby enabling disadvantaged people to compete on equal footing with other candidates for appointments. (NLRFLG, 1994: 2-3)

The secondary objectives of the Agreement are the promotion of openness and encouragement of inclusivity in the decision-making process relating to affirmative action, thereby developing an interdependent trust relationship amongst management, employees and the trade unions; the creation of non-discriminatory organisational structures, culture and practices that will support and encourage employees to respect diversity while focusing on shared values in order to develop team spirit, promote mutual acceptance, optimise potential and achieve organisational goals in serving the community and the accommodation of the disabled where possible; the elimination of all forms of sexual harassment. (NLRFLG, 1994: 3)

This Guide gives the acceptance of the Agreement as Council Policy as the main prerogative. The Local Councils must then set up its own Affirmative Action and Equal Employment Opportunity Commitment which should cover the following main aspects:

- Commitment to the implementation of this Agreement
- Approval of the basic AA implementation plan
- Assignment of full responsibility for the implementation of the AA programme to the Town Clerk/Chief Executive Officer who may assign specific tasks to Departmental Heads
- Regular assessment of the progress of the plan and submission of regular reports by the CEO to Council in this regard
- Ensurance of the implementation of the decisions of the Steering Committee (after approval by Council)
- Inclusion in the Council Strategic Management Plan of the obtainment of greater representativeness of the internal workforce through AA

Jo-Anne Collinge (1994: 22) remarks that the *"argument is often advanced that women are 'naturals' for local government because, as household managers and nurturers of children, they have a vital interest in the kinds of functions town councils usually perform. They are said to be more likely than men to get worked up about unreliable refuse removal, blocked sewerage pipes and unpredictable water cuts. But how accessible is the institution of local government, as set out in the interim constitution and transitional legislation, to women's participation? The first thing to recognise about being a councillor is that it's a demanding second (or third) job - with no pay. ... What councillors get is an allowance. ... It's scarcely enough to cover phone bills and other costs the job incurs. ... Clearly then, both men and women who enter local government must be prepared to shoulder an extraordinary work load. ... since women almost invariably bear the brunt of household responsibilities and head most single parent families, they are much more likely than men to make the calculation that the burden of public office would be too heavy to bear."*

Redcliffe (1995: 19) states that there has to be a universal definition of affirmative action with no loopholes for companies to implement their own versions and interpretations of the affirmative action policy. Some means has to be found to

distinguish between the really disadvantaged people in the community and those who are just clinging to their own victimhood status of a long past apartheid system.

#### 4.4 THE CAPE TOWN CITY COUNCIL

The motto of the Cape Town City Council reads: *"The heart of Cape Town is its people. We believe that it is the democratic right of all our people regardless of race, colour or creed, to participate fully in the city and its city council. We are actively committed to change, and to achieving an open society for all."*

The Cape Town City Council, as a member of the Major Cities Organisation, was part of the Agreement for the implementation of AA and Equal Employment Practice within Local Government, discussed in paragraph 4.3.

In terms of this Agreement, an Affirmative Action and Human Resources Development Agreement was negotiated between Council and the three registered unions: The South African Municipal Workers Union (SAMWU), The South African Association of Municipal Employees (SAAME) and The Cape Town Municipal Professional Staff Association (CTMPSA or PSA as it is mostly referred to) and was signed on 22 April 1994. (Cape Town City Council, 1994: 1)

Affirmative Action and Equal Employment Opportunity as defined by the Cape Town City Council were given under item 1.2.1. Both these definitions encompass the assistance to the disadvantaged and removal of discrimination in the employment within the Cape Town City Council.

This Agreement defines these terms as follows:

**Disadvantaged:** *"any person or persons who have been deprived of rights, career opportunities, afforded inadequate schooling or training opportunities, or been subjected to past discrimination on the basis of race, gender or disability. It shall also refer to any person who have received less advantageous conditions of service*

*and/or wages on grounds of race, gender or disability, which have in turn negatively influenced their opportunity for advancement." (Cape Town City Council, 1994: 1-2)*

**Discrimination:** *"any form of treatment, restriction of opportunity, prejudice, or differentiation of treatment which is based upon factors relating to race, gender or disability. Affirmative Action aims at reversing previous discrimination and shall not be classified as discrimination for the purposes of preventing the implementation of Affirmative Action." (Cape Town City Council, 1994: 2)*

This Agreement states that people should be advanced on merit. This term is defined as *"the capacity or competency to meet the requirements for the job. Previously demonstrated ability, qualifications, experience and knowledge shall all serve as criteria for determining competency but shall be complemented in terms of the introduction, subject to further negotiation of systems of competency assessment leading to accreditation and/or certification of achieved skills and knowledge. The intention is to meet the requirements for the job." (Cape Town City Council, 1994: 2)*

The objectives of this Affirmative Action and Equal Employment Opportunity Agreement are the defining of the roles of the trade unions and management in pursuing a programme of Affirmative Action; the establishment of agreed definitions of all terms and expressions necessary to establish sound communication in the implementation of Affirmative Action strategies; the provision of means of dispute resolution arising out of this Agreement and its implementation and the definition of the obligations of the parties to promoting an understanding of this Agreement and its implementation amongst their respective constituencies. (Cape Town City Council, 1994: 3-4)

The primary beneficiaries of affirmative action are the organisations. Secondary beneficiaries are persons who have been subjected to past discrimination based on race, gender or disability. (Cape Town City Council, 1995(b): Lecture)



The Agreement of Equal Employment Practice and Affirmative Action signed in Durban on 15 August 1994 gives certain guidelines in terms of gender discrimination. This encompasses the removal of any barriers that prevent either men or women from being appointed to any posts which has been traditionally reserved for persons of a specific gender; to obtain equal pay and benefits for all employees doing the same or comparable work for the same period of time; to eliminate any form of sexual harassment and to protect employees against discrimination in employment benefits on the grounds of pregnancy. (NLRFLG, 1994: 7)

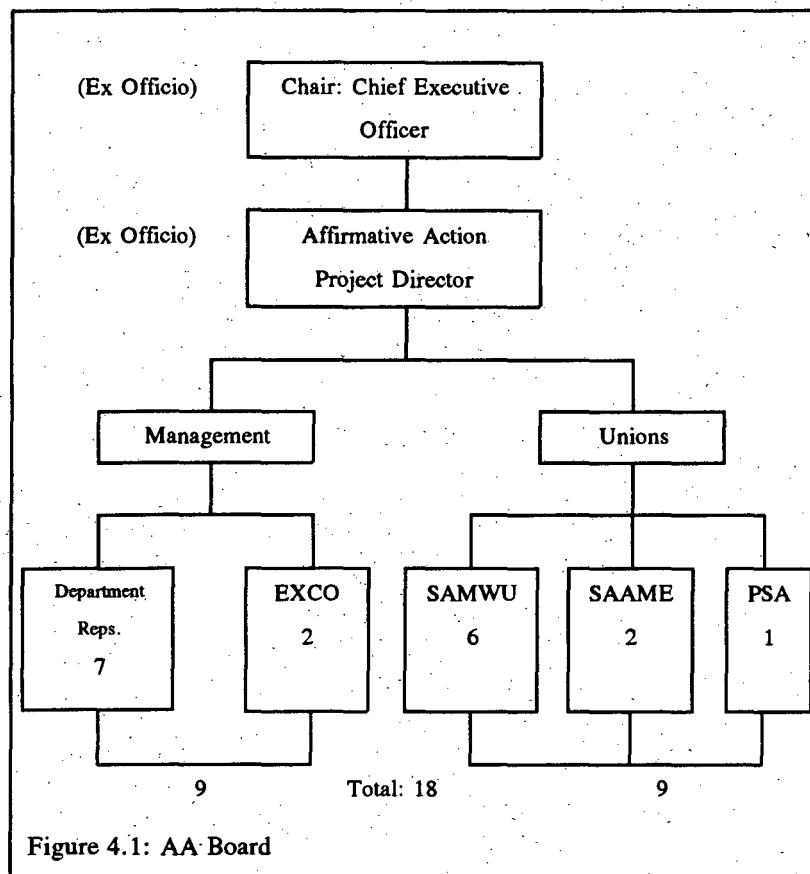
But Affirmative Action and Equal Employment is not a one sided affair. The National Labour Relations Forum for Local Government (NLRFLG, 1994: 8) outlines certain aspects affecting the rights of both the employee and the employer:

All existing rights of employees will be maintained as well as extended to those employees hitherto too disadvantaged to enjoy such rights, bearing in mind the conditions of service pertaining to the various job categories. No employee shall suffer loss of employment benefits as a result of the application of the principles in this Agreement, provided that this shall not be taken to imply that employment might not be affected on ground of bona fide restructuring or amalgamation, as a result of an inclusive negotiating process.

Employers, on the other hand, will also have their rights maintained, within the context of the objectives and principles stated above, and will include the right to supply job opportunities and make appointments in accordance with the functional needs of the local authority; demand sufficient production of an acceptable nature from the employee; and to lead and manage local authority administrations so that their economic viability is enhanced.

In terms of their Agreement, the Cape Town City Council has set up an Affirmative Action Board on which members of the Council and each of the three registered unions sit. The structure of this board is set out in Table 4.1.





(Cape Town City Council, 1995(b): Lecture)

The representatives from the unions fall into different categories: SAAME has Branch delegates from their own branch management, SAMWU's 6 representatives are the Branch Secretary and 5 shop stewards and PSA has an appointed representative from their own committee on the AA Board. Each of these 3 (three) currently recognised Unions have their own ideas on the methods by which Affirmative Action for women should be handled in Council and within their own organisations.

A Cape Town City Council report (1993: 2-4) written after multicultural workshops were held with managers and union representatives during the period September to November 1993 by Julian P. Sonn & Associates. Some of the points raised in this report were that *"Invariably the participants expressed regret that the composition of the group was not more reflective of the population of Greater Cape Town. ...*

*Sexism - the assumption that men are superior to women - continues to be a difficult issue to address. The resistance and tendency to deny the relevance of this form of oppression, continues to be a limiting and divisive issue. Many participants shared the view that the 'schools attended' and the 'old boys network', for example, continue to be part of the informal criteria to include, and exclude. These forms of classism also limit the full utilization of human resources and perpetuate a colonial mentality that alienates not only black and brown people, but also many white people. The culture at the Council appears to be monocultural, in that the English culture seems to be the norm. ..."*

Cynthia Hayward and Zimmie Tobin of SAAME are also setting up a women's forum. (Fields, 1995: Interview) In addition to this, Nene Molefi, the Executive Director of Institutional Transformation in the Cape Town City Council, aims to further women's issues within the organisation. On 8 August, she chaired a discussion in which all female staff were invited to participate to discuss the issues which effect women in the workplace. A number of issues were raised which she has promised to take further. One of the interesting statistics which was mentioned at this discussion was the fact that despite women making up 51% of the world population, they only own 1% of the wealth. Nene Molefi aims to do everything in her power to assist Cape Town City Council women to change this statistic. (IMATU News, 1997: 2)

An African Support Forum (ASF) has been brought into being in Council, but many staff do not know of its existence or what it's purpose is. This Forum is run on a 'club' basis and when queries were made into it's existence, the answer was an abrupt "attend the meetings if you want to find out about it, but it is not for the white people to know about!"

Paragraph 7 of this Agreement deals with the removal of any discriminatory and inequitable provisions in Council's Conditions of Service so as to remove all provisions inconsistent with the *principle of equal conditions for equal work or which*

*unfairly discriminate between the Conditions of Service of different categories of employee.* " (Cape Town City Council, 1994: 7)

There is discrimination against women in many forms, for example, the Local Authorities Medical Aid Fund (LAMAF) requires a woman who wishes to place her husband and/or children on her medical aid to produce her husband's birth certificate and a sworn affidavit that neither he nor the children belong to another medical aid - something not required from a male wishing to put his wife or children on his medical aid - he only has to fill in a form. (SAAME, 1995: 3)

In this chapter the role of the Central and Local Government in the development and progress of AA was examined and then the current position of AA in the Cape Town City Council was discussed.

The next chapter looks at the research discussed in all the preceding chapters and the importance of this research in relation to the Cape Town City Council is reviewed.

## **CHAPTER 5: RESEARCH FINDINGS AND RECOMMENDATIONS**

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### **5.1 INTRODUCTION**

This chapter discusses the research in the previous chapters and considers the importance of these findings with specific reference to the Cape Town City Council. The 8 steps laid down in the Australian Affirmative Action (Equal Opportunities for Women) Act 1986 are each taken and the Cape Town City Council is “measured” against each of these to ascertain whether the Council has/is utilising these steps in the Affirmative Action process. Other issues and concerns about the implementation of affirmative action in the Cape Town City Council are also raised. Various recommendations are then made.

### **5.2 RESEARCH FINDINGS**

The research findings will be discussed as follows: The AA Agreement and the implementation thereof; training and other programmes and staffing levels.

#### **5.2.1 THE AA AGREEMENT**

The Cape Town City Council has already negotiated and co-signed an Affirmative Action and Human Resource Development Agreement with the three registered trade unions of which their employees are members. This Agreement is a general Affirmative Action Agreement and not specifically aimed at the promotion and development of women. No such Agreement is in existence or, from what can be ascertained, being planned.

### 5.2.2 IMPLEMENTATION OF THIS AGREEMENT

This AA Agreement must be communicated to all parties concerned; management, staff and unions alike. The Cape Town City Council will definitely have problems with this step as communication within the organisation is very bad due to many factors like the hierarchical nature of the Council and the level of literacy of the staff. Use is made of the unions' and Councils' own newsletters and other circulars but, as pointed out in section 3.3.1.1.1 above, many of Council's staff are illiterate and therefore other methods of communication have to be found.

Gavin Pieterse (1995: Interview) gives light on the need to communicate in the language and method that is relevant to the staff in all levels. There is almost a 50% functional illiteracy in the Council labour force which renders the sending of circulars and newsletters to those people meaningless, and therefore different ways of communicating with them has to be found, for example tape-recorders could be used by putting things on tape and allowing staff to play them back in their trucks. He is further of the opinion that the development of tools for sensitisation around dance, theatre, plays, etc and taking these out on the road and showing the types and examples of racism, sexism, and stereotypes and prejudices and dysfunctional behaviour that operates in this organisation, through theatre would be a very non-threatening kind of way and then this could be workshopped as part of the mind shift.

Pieterse (Cape Town City Council, 1995(c): 3) states further that a part of this step has already been done and that *"the first of a series of clear and articulate policy guidelines to line managers, on the implementation of affirmative action in recruitment and selection processes, was being circulated with a view to ratification by the Council's Affirmative Action Board, and once approved would be the subject of workshops and presentations in all Council departments."*

He is also of the opinion that two main things have to happen: (1) The way people think has to be changed (refer paragraph 2.1), and linked in many ways with this, (2) Development of people and training which is of course tied hand in hand with budgeting for this. He states further that line managers have abdicated their role as people developers and that this must be reversed. (Pieterse, 1995: Interview)

A further important factor is that there has to be a plan of action showing how affirmative action will be implemented and a form of performance appraisal system for line managers see appraise how they are managing it. Pieterse (1995: Interview) gives an idea how this would work in Council and states that Council would set AA targets which would be approved by the AA Board whereafter each Branch Head would be held accountable for those targets. One would therefore need to have a Performance Appraisal (PA) system in place for line managers because they have to ensure that those targets are met. Part of the PA system will be linked to performance, (how well do they do their job; how well they implement it; support it and develop the affirmative action objectives; how well have they developed their people - identified potentials and competencies and opened up doors for these people and given them the support; on the job training and formal training).

Since the AA Agreement was signed in 1994, the first AA Project Director, Gavin Pieterse, was appointed and the AA Board set up as set out on page 56.

Council has negotiated with the various role players and brought out a document: 'Policy regarding employment: Recruitment and selection whilst the Affirmative Action Policy is in place' (commonly known as the Access to Employment Agreement) dated 1995-10-12. This document deals with matters such as access to employment, determination of targets, recruitment, advertising of posts, application for employment, criteria for prior selection, interviews and the status and interpretation of this Agreement. (Cape Town City Council, 1995(d): 1-6)

### 5.2.3 OTHER PROGRAMMES/TRAINING

Various Council programmes have been put into place. These are briefly described below:

Paragraph 1.4 of the Access to Employment Agreement (Cape Town City Council, 1995(d): 1) states that *"The parties agree to the principle of enhancing access to employment for the purposes of affirmative action by negotiating programmes such as early retirement, mentoring, etc. Such early retirement shall not be compulsory."*

Council has started on a one year Adult Basic Education Training programme from which many staff members are benefiting. (Teamtalk, 1996: 2) Council do not offer courses specifically for women other than a course for battered wives. They do, however, offer courses like stress management to help employees deal with discrimination and the stresses and strains of promotional posts. (Department of Human Resources, 1996: 11) But there is a definite need for courses aimed specifically at women to assist them to cope with or be able to compete in the promotional posts offered. Courses are especially needed to assist Blacks, both men and women, to realise that women are not inferior to men and can be very successfully employed in promotional posts. (Makura, 1996: Interview)

A list of the courses offered is set out in the attached Annexure 'B'.

Other training is being undertaken on a branch level, for example, the City Treasurer, has taken a group of people from the lower ranks, tested them and has enrolled them in a Technikon course with accountancy as one of the majors so that they may have the opportunity to work their way up within the ranks of the various fields in Treasury.

#### 5.2.4 STAFFING LEVELS

James Brook (1991: 69) states that *"Municipalities may determine their own staff organisation within the broad parameters of provincial ordinances. As representative of the body corporate, the municipal council is the employer and the appointed municipal officials its employees. Therefore, any strategic policy determination with respect to manpower utilisation lies ultimately with the council. Since councillors in turn are elected by ratepayers in the municipal district and are directly accountable to the latter, policy decisions generally reflect broader community standpoints. Therefore, in conservative municipal areas, one can expect the municipality to exhibit a guarded approach to the advancement of Blacks. Conversely, a more proactive approach should be evinced in more liberal districts."*

Pieterse (1995: Interview) stated above that Council sets a guideline for representivity and then each Branch has to sit down and work out its own target. Each Branch would have to *"create a forum of equal representation between unions and management, non-hierarchical, no status, no position, where people come and talk to plan the future of the branch, where you say: 'Alright this is what we look like now, this is what we do, this is who does it. Let's take into consideration and start planning around our new areas of operation and the new way we are going to be doing things. What do we have to do, what kind of people do we need? What are the resources in terms of skills that is available internally and externally and what do we have to do to bring those people in? What are the levels of potential of the people here for development? There are a lot of people in the organisation, but they be developed, can they be trained? What are the level of skills that are already prevalent in the organisation?'"*

Council have recognised the fact that they have to change and become more representative of the population. This is clear in the Affirmative Action and Equal Opportunity Agreement and in the guidelines that the Department of Human Resources is using in the recruitment process. Unfortunately, in some cases, the application of these guidelines is taken as black and white with no grey areas. This



tends to cause problems in that the details and reasoning behind guidelines and certain discussions are not communicated to the management and/or the staff.

If one looks at the Cape Town City Council over the past few years, one sees that certain changes have taken place. The tables set out on the following pages show the changes in the various staffing levels (grades) between the genders over the years 1993 to 1996.

A profile of permanent staff of the Cape Town City Council as at 1994-06-30:

(Cape Town City Council, 1994, Lecture)

Table 1: Cape Town City Council Permanent Staff Profile as at 1994-06-30

	TOP MANAGEMENT		MIDDLE MANAGEMENT		PROFESSIONAL		TECHNICAL		SEMI-SKILLED		UNSKILLED	
GRADES:	1-6		7-12		13-14		15-17		18-22		23-26	
	M	F	M	F	M	F	M	F	M	F	M	F
WHITE	62	3	455	57	380	45	915	261	996	573	6	2
COLOURED	3	1	41	10	66	22	543	245	4516	664	5352	370
AFRICAN	0	1	1	2	3	4	9	35	90	38	182	15

Compare these figures with employment statistics as at 1993-12-31:

Table 2: Cape Town City Council Permanent Staff Profile as at 1993-12-31

	TOP MANAGEMENT		MIDDLE MANAGEMENT		PROFESSIONAL		TECHNICAL		SEMI-SKILLED		UNSKILLED	
GRADES:	1-6		7-12		13-14		15-17		18-22		23-26	
	M	F	M	F	M	F	M	F	M	F	M	F
WHITE	63	3	464	55	373	45	942	261	1037	596	9	2
COLOURED	2	1	39	9	61	19	533	228	4497	646	5314	531
AFRICAN	0	1	2	2	1	3	8	30	77	37	159	15

The change from 1993 to 1994 is given in the following table: nil = no change

Table 3: Changes in the Cape Town City Council Permanent Staff profile between 1993-12-31 and 1994-06-30

	TOP MANAGEMENT		MIDDLE MANAGEMENT		PROFESSIONAL		TECHNICAL		SEMI-SKILLED		UNSKILLED	
GRADES:	1-6		7-12		13-14		15-17		18-22		23-26	
	M	F	M	F	M	F	M	F	M	F	M	F
WHITE	-1	0	-9	+2	+7	0	-27	0	-41	-23	+3	0
COLOURED	+1	0	+2	+1	+2	+3	+10	+17	+19	+18	+38	+161
AFRICAN	0	0	-1	0	+2	+1	+1	+5	+13	+1	+23	0

Figures as at 1996-06-30 are given in the following table:

(Scholtz, 1996: Interview)

Table 4: Cape Town City Council Permanent Staff Profile as at 1996-06-30

	TOP MANAGEMENT		MIDDLE MANAGEMENT		PROFESSIONAL		TECHNICAL		SEMI-SKILLED		UNSKILLED	
GRADES:	1-6		7-12		13-14		15-17		18-22		23-26	
	M	F	M	F	M	F	M	F	M	F	M	F
WHITE	61	5	445	66	380	53	790	241	885	531	19	4
COLOURED	6	1	55	11	119	33	601	278	4609	768	5135	380
AFRICAN	0	0	9	4	11	11	20	48	187	89	310	24

The change from 1994 to 1996 is given in the following table: nil = no change

Table 5: Changes in the Cape Town City Council Permanent Staff profile between 1994-06-30 and 1996-06-30

	TOP MANAGEMENT		MIDDLE MANAGEMENT		PROFESSIONAL		TECHNICAL		SEMI-SKILLED		UNSKILLED	
GRADES:	1-6		7-12		13-14		15-17		18-22		23-26	
	M	F	M	F	M	F	M	F	M	F	M	F
WHITE	-1	+2	-10	+9	0	+8	-125	-20	-111	-42	+13	+2
COLOURED	+3	0	+14	+1	+53	+11	+58	+33	+93	+104	-215	+10
AFRICAN	0	-1	-8	+2	+8	+7	+11	+13	+97	+51	+128	+9

### 5.2.5 THE AUSTRALIAN AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN) ACT 1986 AND THE CAPE TOWN CITY COUNCIL

This Act sets out 8 steps for implementation as was shown on page 27. These steps are discussed below together with those steps that the Cape Town City Council has taken in each case.

#### 5.2.5.1 POLICY STATEMENT

Council issued a policy statement on Affirmative Action (the 1994 AA Agreement), but, as can be seen later, many employees never knew of its existence. If one looks at the requirements of the first step - that of the issuing of the policy statement as set out in paragraph 3.3.1.1.1, one sees that the statement should be issued by a senior officer who gives details of the AA policy, date and method of implementation and that the issue should be made to all employees, regularly updated and a copy given to all new employees. This has not happened in the Cape Town City Council. As far as can be ascertained, very few employees have seen any indication of a policy statement - in fact the policy statement is the Council's Affirmative Action Agreement and is still marked 'Confidential - Not for Publication - Copyright reserved!'

Justine Quince (1996: Interview), Personnel Manager, Labour Relations, of the Cape Town City Council, who facilitated the meetings whilst both the AA Agreement and the Access to Employment Agreement were developed, said that one of the main problems with AA in the Council is communication. The policy regarding AA has not been communicated to all staff. This is one of the major problems encountered by large hierarchical organisations like the Council. Council has a major problem in this regard and plans have to be put into place to counteract this.

#### 5.2.5.2 APPOINTMENT OF APPROPRIATE STAFF

In SA, the post of Director of Affirmative Action tends to be the name given to the post created within each organisation, the incumbent of which is the person who is responsible for the successful implementation of the AA programme within that organisation and not a Central Government post as is the case in Australia, for example.

An Affirmative Action Officer and relevant staff were appointed, but both the Affirmative Action Project Director, Mr Gavin Pieterse and the Affirmative Action Officer, Ms Shanaaz Majiet-Chalklen have left the employment after less than eighteen months.

Pieterse (1995: Interview) believes that there are other key issues like neutrality of the AA Officer: *"My role is particularly precarious because I have to rely on my independence and neutrality to develop trust on both sides union and management and that is why I renegotiated the nature of my contract up front. It was originally planned that the AA Officer should report to the Director of Human Resources direct which is a major error. I have consulted in many organisations and have seen that you cannot relegate such an important strategic intervention to Human Resources because Human Resources by its nature, in corporate SA, in public service, is a disempowered unit. If you compare the kind of clout and power Treasury who are the finance people and any operational arm and in corporations the marketing arm, that's the manne, Human Resources are the nice guys, nobody takes them seriously. That is why I report directly to Keith Nicol, the Town Clerk, and it is crucial that I hold the City Planner, Director of Human Resources, City Electrical Engineer, MOH, in other words, all departmental heads accountable at the end of the day. It is essential that the post of the AA Officer is neutral."*

#### 5.2.5.3 CONSULTATION WITH UNIONS

As was discussed in paragraph 3.3.1.1.3, the Council has consulted with the three recognised trade unions and have signed an Affirmative Action Agreement in April 1994. This Agreement is supposed to be regularly updated, but, apart from all parties meeting on the AA Board and having other meetings and discussions, it does not seem as if the Agreement has been updated at all yet.

#### 5.2.5.4 CONSULTATION WITH STAFF

As far as the consulting with employees is concerned, I feel that here the Council has fallen short. Although many short articles have appeared in the Cape Town Municipal Bulletin and in the Town Clerk's Council News (later changed to Teamtalk) which appears in each employees salary/wage package and various talks have been held at various venues with staff, many staff do not know the real case of Affirmative Action employment. Many say that they have heard about AA, but it does not affect them while many say that, as they are from previously disadvantaged groups, everyone must drop everything and ensure that they get the next promotion or training or insist on being there for the next post offered, whether they qualify for employment to that post or not. Unfortunately, AA is also not being handled the same by Council's various employment officers. Recently, after going through the exhaustive process of interviewing and marking a number of candidates for three vacant posts and being continually reminded by the employment officer that 'everyone must be marked on the same basis and you must not mark one against the other', we were told at the end that 'no matter what the scores come out at, you will employ that person as that person is the most disadvantaged!' These matters are, however, teething problems and the Council is attempting to level the playing field and get matters such as these corrected. But how long must one have teething problems?

Patrick Makura (1996: Interview) expresses the opinion that *"the AA Board is not doing enough to promote the programme. Statements by the Board members are also not being matched by deeds."*

Maybe Council should note the words of Mr Mandela (Mkhwanazi, 1993: 17): *"We are not asking for handouts nor are we saying that just as a white skin has been a passport to privilege in the past so a black's skin should be the basis of privilege in the future. What we are against is not the upholding of standards."*

#### 5.2.5.5 ANALYSIS OF EMPLOYMENT PROFILE

The Council's employment profile has been analysed and is continually being looked at each time a post is to be filled. At the time of interviewing for a post, the employment profile of that post level or grade within the Branch or section is analysed and the AA 'weights' are brought into play when the appointment is considered.

Gavin Pieterse (1996: 22) declares that in the Cape Town City Council the following in the case: *"With a view of becoming more representative of our customer-base, interim council-wide targets, based on the demographics of the broader Cape Metropolitan Council, are laid down by the Affirmative Action Board until such time that each of the 52 operational branches in council has had an opportunity to negotiate its own targets based on each department/branch's specific future operational plan. The rationale is that each branch and sector of the organisation has its own dynamics, peculiarities and obstacles which will make the affirmative action implementation and target objectives."*

Mrs Yolanda Scholtz (1996: Interview) Chief Personnel Officer in the Department of Human Resources indicated that the current affirmative action guidelines are to aim for representivity of a ratio of 46:29:25 for coloured:black:whites with a fifty:fifty split between the sexes. This is the percentages of the populous of the Cape Town Municipal area. The percentage of females to males in the rural areas

is 52:48. This percentage split bodes well for the future employment of female staff.

#### 5.2.5.6 ANALYSIS OF EMPLOYMENT POLICIES AND PRACTICES

The Council is looking at all existing employment practices and policies and making attempts to correct all imbalances in any such practice or policy. Such a step takes time and, although much has already been done in this regard, there is still a long way to go.

Wolmarans (1997:29) points out that direct as well as indirect forms of discrimination occur. Examples of the latter could be the use of inappropriate tests which impact disproportionately on individuals from a specific group by way of language used or the setting of unrealistic criteria. The questions asked of job applicants have to be the same and consideration must also be given to the media selected (including internal media and notice boards) in which to place the advertisements for positions as this could discriminate against people who do not read that specific newspaper, for example, and prevent them from applying for any vacant position. A further point to be considered, is the pre-employment medical examination and the use made of the results of such an examination as this could also be seen as discrimination.

#### 5.2.5.7 SETTING OF OBJECTIVES AND FORWARD ESTIMATES

Paragraph 2.6 of the Access to Employment Agreement (Cape Town City Council, 1995(d): 2) states that *"With regard to the negotiated targets the necessity for consultative forums is stressed (equal representivity is essential). These must be mandated to negotiated targets per branch based on operational plans and Human resource plans for the future. Recommended targets shall be referred to the Board for approval. Where the forum fails to reach Agreement, the AAPD [Affirmative Action Project Director] shall attempt to facilitate an Agreement, failing which the dispute shall be referred to the Affirmative Action Board."*

Objectives and forward estimates have been set and agreed upon by the Unions. The Access to Employment Agreement states that the *"Objectives of setting targets is to reflect the representativeness of the personnel establishment of the Council in accordance with the demographics of the Cape Metropolitan area."* (Cape Town City Council, 1995(d): 1) Council aim to have their employment profile mirror the profile of the ratepayers within their boundaries, i.e. as discussed in paragraph 5.2.5.5 above, they aim to have a ratio of 46:29:25 for coloured:black:white staff. The AA Agreement signed between Council and the three recognised trade unions is binding for a period of five years and can be extended, if the objectives have not been met.

Patrick Makura (1996: Interview) discussed concerns raised at an Affirmative Action Board Workshop held on 2nd October 1996. *"There is confusion about the ever-changing targets and what they mean. The emphasis appears to be on numbers rather than on quality of appointees. There also is a lack of mentorship and orientation programmes for appointees."*

#### 5.2.5.7.1 MONITORING AND EVALUATION

There are various programmes in place to monitor and evaluate the success of the Council's AA Programme. These are evident in the interview process as Council does not only look at the big picture but realises that the policy of synergy works. They look at the employment profile of each post grade at the time of filling a vacancy.

Patrick Makura (1996: Interview) is of the opinion that communication between appointees and their seniors is non-existent. It seems as if staff are appointed into positions and left to sink or swim in most cases.



#### 5.2.5.7.2 MERIT PRINCIPLE

Norman Kemp (1997: 27) is of the opinion that by providing people with the competencies to compete on merit, standards should not drop and there should also be no token appointments.

Pieterse (Cape Town City Council, 1995(c): 3) gave his opinion of this principle in Council: *"The affirmative action selection process in the Council is based on identifying competent candidates for a particular job who may not necessarily be the best candidates in terms of qualifications, experience or length of service. But they are nevertheless competent to do the job and the appointment of such a person is therefore made on merit."* This is, in the opinion of the writer, possibly carrying the merit principle a bit far - at least in areas where the writer has seen it implemented - it seems to be implemented as almost reverse discrimination, but the writer agrees with the basic idea behind this statement which is that a person who has the ability and experience necessary to do the job should be given as much, or more chance than the person who has the qualifications (on paper but might not have the ability).

Norman Kemp (1997: 27) discusses the commonly held belief that affirmative action means preferential treatment irrespective of individual merits, talents and ideals: *"Preferential treatment means the lowering of standards and reverse discrimination, both of which are anathema to many. There is resistance to preferential treatment for a variety of reasons. Firstly, there are those (white males) who stand to suffer reverse discrimination. Secondly, there are some blacks who are also opposed to affirmative action as they regard it as an insult ... [and] feels that affirmative action demeans the achievements of successful blacks ... and violates the ideal of individual merit enunciated by Martin Luther King. ... The solution in my opinion will not be to make affirmative action compulsory in terms of a law. It will be better for the government to invest in a huge campaign to equalise abilities so that everyone can compete on merit."*

### 5.3 OTHER ISSUES AND CONCERNS

A number of factors are to be considered and implemented in the AA programme, including:

Communication of the AA programme, auditing of current staff profile, culture management programmes, codes of conduct, HR development programmes, re-evaluation of study assistance and bursary schemes, revision of conditions of service and recruitment methods where required, setting of targets, etc. These are discussed in the following sections.

#### 5.3.1 THE IMPLEMENTATION OF AA

Gavin Pieterse (1996: 22) looks back on the past few years of AA in the Cape Town City Council and points out a few errors made: *"The most important lesson we have learned is that when faced with a challenge of this magnitude, for which effective solutions are unknown, the first step is to get all the stakeholders together, agree on certain basic and uncompromising principles and values by which the organisation wishes to be known, proceed collectively to develop some experiments and agree which ones to try on the job. If it works, standardise it; if it does not, go back and try another experiment. The lesson is, commit to the process, get all the divergent aspirations, expectations and thinking on board and make it up as you go along. The reality is, affirmative action implementation in South Africa, more specifically in the City of Cape Town, specifically in each department and branch, is uncharted waters."*

Further, Patrick Makura (1996: Interview) maintains that there is still a lack of climate/environment preparation or an integration programme for staff entering previously uncharted waters. An example is where women are being employed in 'traditionally male' dominated depots or sections and no toilet facilities have been provided for them.

### 5.3.2 COMMUNICATION

Patrick Makura (1996: Interview) in discussing various problems brought up in the AA Board Workshop held on 2 October 1996 and said that there is a distinct lack of communication in many fields: There is *"a lack of communication strategies from unions and AAB in addressing fears and anxieties of AA appointees as well as between appointees and their seniors - which is virtually non-existent."*

He also spoke of lack of AA communication in areas like Crossroads and Ikapa; the variety of interpretations of what AA is all about; the lack of education and training programmes; lack of co-operation between management and workers; the lack of communication about the impact of pilot projects/Branches is never communicated to those who are directly effected or to Council staff as a whole. A further problem, he contends, is the fact that the little communication there is, is done mainly in English. (Makura, 1996: Interview)

Barbara Macdonald, chief executive of Barbara Macdonald Research, (Efrat, 1996: 15) relates that *"Black employees often feel isolated as they are just placed in a foreign environment and expected to perform. Many companies fail to provide them with a real support system. ... many companies do not try to understand how their black workers think and feel and their different cultural backgrounds."* She further attributes the difference between black and white perceptions as **miscommunication** which she states is a *"lack of communication and a misunderstanding of what affirmative action placements need."*

### 5.3.3 REPRESENTIVITY OF ROLE PLAYERS ON THE AA BOARD

Patrick Makura (1996: Interview) said that a number of interest groups like the disabled, women's forums and non-aligned members, etc., felt left out as they were not represented on the AA Board. Further, representatives from the newly incorporated areas of Pinelands, Ikapa and Crossroads should also be represented on

the Board. He also felt that the representatives from the Departments should be re-looked at to ascertain if they are appropriate representatives.

#### 5.3.4 TRAINING

Existing programmes like Adult Basic Education Training should be extended. Other programmes have to be instituted like a comprehensive mentorship programme and career development which focuses on multi-skilling. Training courses should be accredited to lead to credibility and recognition and the principles of NQF/SAQA is a must. (Makura, 1996: Interview)

#### 5.3.5 NEGATIVE PERCEPTIONS

Many people of all races, have negative perceptions about Affirmative Action and what it will mean to them.

Labour Minister Tito Mboweni said that the mere mention of the term affirmative action makes people insecure - "there go our jobs" - "the lowering of standards" - "racism in reverse" are all terms he hears. *"But this need not be, if we take cognisance of the past and acknowledge the necessity of fundamental change."* (Financial Mail Special Report, 1994: 49)

The Public Servant's Association recently took the Department of Justice to the Pretoria High Court to challenge the appointment of candidates for posts of state attorneys and their deputies. Well qualified white males who applied for the posts were not even granted interviews and decided to take the matter to court. The court ruled that the government had acted unconstitutionally and asked for the codes in the new **Public Service Act, 1994 (Act 103 of 1994)** to be declared invalid and set aside because they improperly discriminated against white men. Judge Swart said *"The efficiency of the public administration cannot be compromised by promoting a broadly representative public administration. I think this follows as a matter of logic and experience. It is the civil service which bears the enormous responsibility and*

*requires the extensive expertise to manage the country, which management encompasses a myriad statutory provisions, and logistical and administrative applications. This is particularly true of professional departments such as for instance, the state attorney's offices."* He added that, even though the court had to be responsible when criticising government decision, he was forced to conclude that official affirmative action policies did not satisfy the requirements of the Constitution. (Rickard, 1997:25)

#### 5.4 RECOMMENDATIONS

Staff must be kept informed about what training courses are available for them to undergo - as well as the existence of any forums which they can approach when they have a problem. In short, the whole Council communication system needs to be revamped! Unfortunately, a lot of damage has already been done and it will be a long, uphill battle to correct the already entrenched beliefs of a number of people that AA is the worst thing that anyone could have dreamt up and the opposite beliefs of others that AA is the waving of a magic wand and all staff previously discriminated against will miraculously be promoted.

Further, Council must reassess its employment practices and policies - and ensure that **all** staff are kept informed of affirmative action policies and practices as well as the recruitment procedures and how these affect the staff - and continue to reassess the programme and make any adjustments required.

The post(s) of Affirmative Action Officer and/or Project Director must be replaced as soon as possible and he/she must drive the project.

Council, together with the three recognised Unions, must continually reassess the AA Agreement to see if any changes are required, especially in the fields of targets, policies and practices - and again staff must be informed of any changes made.

Many of the female staff members will have to be trained to cope with the future changes and this can be a long process. Many - especially Blacks - also have to cope with their 'cultural backlog' in that their traditional role is that of subservience. Many males feel threatened by the upward mobility of females and cannot cope with this 'threat' which in turn adds to the restraints against the upward mobility of women. Also it is possible to change one's perception although people are usually resistant to any form of change but particularly find this concept difficult to accept. Training is required to assist them to understand the new roles that women can and will be playing. Council also is not doing enough to train women for these new roles. This can be seen from the training programmes listed on Annexure 'B'.

Legislation on equality for women must be promulgated in South Africa and the necessary forums set up to ensure its success.

## 5.5 CONCLUSION

The AA Agreement touches on the employment of women, but, although Council and its three recognised Unions have and are doing a fair amount to promote the employment of women in various occupations, there is still a long way to go. Women are being employed in many previously no-go areas like Traffic, Fire Brigade, etc., but many people feel that this is still tokenism.

The efficacy of the implementation of the rights of women in Local Government will depend on the following imperatives being addressed as soon as possible:

- \* Revamping of the communications systems within Council
- \* Filling of the post(s) of Affirmative Action Officer and/or Project Director
- \* Reassessment of the AA Agreement together with the communication to the staff of any changes made
- \* Training of staff to be prepared for the upward mobility of women and to assist males to accept this

Ultimately, it is incumbent upon each and every individual to respect the right of others and recognising our interdependence, a culture of dignity, integrity, common sense of purpose and high productivity will manifest itself. Women are an untapped resource and, in a growing country like ours, use should be made of every possible resource to further enhance our lives and ensure that we move rapidly from a so-called Third World to the First World country we deserve to be!

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ANNEXURE 'A'

1 POLICY OBJECTIVES OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The following have been identified as policy objectives:

- 1.1 To engage in a process to improve the representativeness of the personnel establishment of the Council to reflect the racial and gender composition of the citizens of Cape Town metropolitan area and to identify and give special attention to those areas of the Council's service which are not currently representative; while recognising the need to maintain and improve the present standards of effectiveness and efficiency in service delivery and an absence of discrimination based on any form of stereotyping;
- 1.2 to redress past discrimination;
- 1.3 to appoint staff based on merit. Emphasis will be on meeting the requirements for the job and not necessarily appointing the highest qualified person. Potential must be taken into account as a factor when appointing staff;
- 1.4 to establish recruiting procedures, manpower planning, succession planning, career pathing, performance management and competency based assessment which will ensure an adequate supply of suitably qualified employees while at the same time improving the representativeness of the Council's personnel establishment;
- 1.5 to enhance the capacity of the Council to deliver client-orientated services with the understanding and empathy towards the community it serves;
- 1.6 to adopt a goal-orientated approach, recognising that targets will have to be set to serve as broad guidelines to be achieved over the short to medium term with intermediate goals. There is an obvious need to be flexible as merit and standards of efficiency have to remain acceptable and would therefore act as constraints;
- 1.7 to recognise and develop potential of staff in those categories which are underrepresented, by actively providing opportunities for enhancing their ability to compete for appointment on merit;
- 1.8 to remove hidden barriers and to open up career paths by ensuring access to all occupants and promotional opportunities;
- 1.9 to enable employees to acquire a range of skills which will improve their performance and their ability to compete for advancement within and outside their current employment category;
- 1.10 to break down existing stereotyping of various Council occupations based on race, gender or disability;
- 1.11 to introduce adult basic education programmes and vocational training opportunities designed to enhance the skills of the workforce on a basis over and above that which is needed for the particular and immediate establishment needs of the Council;
- 1.12 to introduce programmes to re-orientate management and workers in relation to discriminatory attitudes based on race, gender or disability.

ANNEXURE 'B'

COURSES FOR 1996/97 OFFERED BY THE DEPARTMENT OF HUMAN RESOURCES, CAPE TOWN CITY COUNCIL.

2 TRAINING AND DEVELOPMENT (T&D)

2.1 Development training:

- \* Practical Management
- \* Active Supervision
- \* Multi-cultural Resource Programme
- \* Customer Care
- \* Business Presentation Skills
- \* Train-the-Trainer - Delivering Effective Training Presentations
- \* Xhosa
- \* Induction
- \* Secretarial Development Programme

2.2 Organisational Development

2.3 Adult Basic Education Training

2.4 New courses currently being developed

2.5 Future Courses

3 EMPLOYEE ASSISTANCE PROGRAMME (EAP)

3.1 Development training

- \* Human Relations Training
- \* Lifestyle Management
- \* Stress Management

3.2 Promotional and Awareness Training

- \* H.I.V. / AIDS Training
- \* Substance Awareness Training
- \* The Battered Wives Programme

3.3 Combined Intervention and Training A course to deal with small groups of employees within sections where there are interactional problems which warrant intervention.

3.4 Future Training A course is being planned to assist previously disadvantaged employees with their adjustment and integration through small group discussions.

4 ASSESSMENT AND SELECTION

4.1 Courses and Workshops

- Professional Selection Interview (for supervisors and managers)
- Assessment and Selection
- Affirmative Action Workshop
- Appointment Appeal Workshops

4.2 Career Counselling : Assessment and Advice

5 LABOUR RELATIONS

Courses and Programmes

- \* Chairpersons and Initiators Training
- \* Conflict Resolution / Handling Grievances
- \* Participative Management
- \* New Labour relations Act and General Labour Relations

6 PROJECTS

Certificate Courses in Municipal Administrative Practice (C.M.A.P.)

## LESSONS FROM GEESE

by Milton Olson



▲ As each bird flaps its wings, it creates an 'uplift' for the bird following. By flying in a 'V' formation, the whole flock adds 71% greater flying range than if the bird flew alone.

*Lesson: People who share a common direction and sense of community can get where they are going quicker and easier because they are travelling on the thrust of one another.*

▲ Whenever a goose falls out of formation, it suddenly feels the drag and resistance of trying to fly alone and quickly gets back into formation to take the advantage of the 'lifting power' of the bird immediately in front.

*Lesson: If we have as much sense as a goose, we will stay in formation with those who are headed where we want to go (and be willing to accept their help, as well as give ours to the others).*

▲ When the lead goose gets tired, it rotates back into the formation and another goose flies at the point position.

*Lesson: It pays to take turns doing the hard tasks and sharing leadership - with people, as with geese, we are interdependent on each other.*

▲ The geese in formation honk from behind to encourage those up front to keep up their speed.

*Lesson: We need to make sure our honking from behind is encouraging - and not something else.*

▲ When a goose gets sick or wounded or is shot down, two geese drop out of formation and follow it down to help and protect it. They stay with it until it is able to fly again or dies. Then they launch out on their own, with another formation, or catch up with the flock.

*Lesson: If we have as much sense as geese, we too will stand*